(16,417.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1897.

No. 251.

WILLIAM RICHARDSON, TRUSTEE, PLAINTIFF IN ERROR,

vs.

THE LOUISVILLE AND NASHVILLE RAILROAD COMPANY AND M. H. SULLIVAN AND EMILY S. SULLIVAN, EXECUTOR AND EXECUTRIX OF D. F. SULLIVAN, DECEASED.

IN ERROR TO THE SUPREME COURT OF THE STATE OF FLORIDA.

INDEX.

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., JULY 14, 1897.

1 Be it remembered that on the 23rd day of June, A. D. 1894, at a regular term of the supreme court of the State of Florida, came the plaintiff in error, William Richardson, trustee, by counsel, and filed in the clerk's office of the supreme court of the State of Florida a transcript of the record of the proceedings and judgment of the circuit court of Florida for Escambia county in a certain cause wherein William Richardson, trustee, was plaintiff and The Louisville & Nashville Railroad Company and M. H. Sullivan and E. S. Sullivan, executor and executrix of D. F. Sullivan, deceased, were defendants, and the writ of error to the judgment of the circuit court therein rendered; which said writ of error and transcript of the record of the cause aforesaid and subsequent proceedings to judgment are in the words and figures as follows, to wit:

Pleas in the circuit court of the State of Florida for the first judicial circuit, in and for the county of Escambia, in a certain cause therein wherein William Richardson, trustee, is plaintiff and M. H. Sullivan and Emily S. Sullivan, as executor and executrix of the estate of D. F. Sullivan, deceased, and The Louisville & Nashville Railroad Company are defendants.

Be it remembered that on the 27th day of July, in the year of our Lord one thousand eight hundred and seventy-seven, came William Richardson, trustee, plaintiff in the cause aforesaid,
2 by C. C. Yonge and Wm. A. Blount, his attorneys, and filed in the clerk's office of the circuit court aforesaid his precipe and declaration in words and figures following, to wit:

Escambia County Circuit Court, August Rules, 1877.

WILLIAM RICHARDSON, Trustee of Mary C. Richardson,
vs.
D. F. SULLIVAN.

The clerk will please issue summons in ejectment against the defendant as above.

C. C. YONGE AND
WM. A. BLOUNT,
Attorneys for Plaintiff.

July 27th, 1877.

Escambia County Circuit Court, August Rules, 1877.

To wit:

William Richardson, trustee of Mary C. Richardson, by his attorneys, complain- of D. F. Sullivan, who has been summoned to answer him in an action of ejectment:

For that whereas the defendant is in possession of a tract or parcel of land situate, lying, and being in said county, known and de-

scribed as follows, to wit: Lots Nos. one, two, three, four, five, six, seven, eight, in square seven, and square forty-seven (47), containing four lots, and lots nine and ten, in square number ten, in the water front of Pensacola, according to the plan of said water front by James Harding, the said lots and parcels of land being
3 on the projection of Tarragona street into the bay of Pensacola, to which said plaintiff claims title; and the defendant has received the profits of said land since the first day of April, A. D. 1876, of the yearly value of $1,000.00, and refuses to deliver the possession of the said land to the plaintiff or to pay him the profits thereof.

C. C. YONGE AND
WM. A. BLOUNT,
Attorneys for Plaintiff.

Ejectment for lots 1, 2, 3, 4, 5, 6, 7, 8, square 97; square 47, containing four lots; lots 9 and 10, in square 10, in water front of Pensacola, according to plan of James Harding.

(Indorsement:) William Richardson, trustee, *vs.* D. F. Sullivan. Filed July 27th, 1877. F. E. de la Rua, clerk ct. ct. C. C. Yonge and W. A. Blount, for plaintiff.

Whereupon a summons *ad respondendum* issued from the clerk's office, which, with the return and indorsement thereon, is in the words and figures following:

THE STATE OF FLORIDA, *ss:*

Escambia County Circuit Court.

To the sheriff of said county, Greeting:

We command you that you summons D. F Sullivan to be
4 and appear before the honorable the judge of our circuit court for the county of Escambia, at a court to be holden at the court-house, in the city of Pensacola, on the first Monday, being rule day and the 6th day of August, next, to answer the complaint of William Richardson, trustee of Mary C. Richardson, in an action of ejectment. Damages claimed, $—. This you will in nowise omit, under the penalty of the law; and have you then and there this writ with your proceedings endorsed thereon.

Witness F. E. de la Rua, clerk of our said court, at the court-house aforesaid, this 27th day of July, A. D. 1887.

F. E. DE LA RUA,
Clerk Circuit Court.

Description of property sued for: Lots 1, 2, 3, 4, 5, 6, 7, 8, square 97; square 47, consisting of four lots; lots 9 and 10, in square 10, in water front of Pensacola, according to plan of James Harding.

(*Return.*)

Came to hand July 27th, 1877, and executed the same day by serving a copy of the within summons on D. F. Sullivan.

M. H. HUTCHINSON, *Sheriff.*

Pensacola, July 27th, 1877.

(Indorsements:) Wm. Richardson, trustee Mary C. Richardson, *vs.* D. F. Sullivan. Writ issued July 27th, 1877.

5 And afterwards, to wit, on the 3rd day of September, in the year of our Lord one thousand eight hundred and seventy-seven, the defendant, by his attorneys, filed in the clerk's office aforesaid his plea in the words and figures following:

In the Circuit Court of the First Judicial Circuit of the State of Florida for Escambia County.

WILLIAM RICHARDSON, Trustee of Mary C. Richardson,
vs.
D. F. SULLIVAN.

And the defendant, by his attorneys, R. L. Campbell and G. A. Stanley, for plea to the plaintiff's declaration says the plaintiff has no title to the lots described in his declaration or any of them; and this the defendant is ready to verify. Wherefore he pays judgment, &c.

R. L. CAMPBELL AND
G. A. STANLEY,
Attorneys for Defendant.

STATE OF FLORIDA,
Escambia County.

Martin H. Sullivan, the agent of the defendant in the above-stated case, being duly sworn, says that the foregoing plea is true.

M. H. SULLIVAN.

Sworn to and subscribed before me this 3rd September, A. D. 1877.

6

[SEAL.]

W. D. MACLAY,
Notary Public.

The plaintiff joins issue on the above plea.

C. C. YONGE AND
WM. A. BLOUNT,
Attorneys for Plaintiff.

July 19th, 1879.

(Indorsement:) William Richardson, trustee, &c., *vs.* D. F. Sullivan. Ejectment. Action of ejectment. Filed September 3rd, 1877. F. E. de la Rua, clerk. G. A. Stanley and Richard L. Campbell, attorneys for defendant.

And afterwards, to wit, on the 23rd day of April, in the year of our Lord one thousand eight hundred and eighty-six, the following agreement was made and filed, to wit:

WILLIAM RICHARDSON, as Trustee of Mary C. Richardson,
vs.
M. H. SULLIVAN and EMILY S. SULLIVAN, as Executor and Exec-trix of D. F. Sullivan, Dec'd.
} Ejectment.

By consent of the parties to this action, the Louisville & Nashville Railroad Company is, upon its application by its attorneys, Gaylord B. Clark and Richard L. Campbell, made a party defendant to the action as to the premises described in the plaintiff's
7 declaration, of which it is in possession and to which it claims title, except as to that portion of block 47 of which the said executor and executrix admit themselves to be in possession, the said Louisville & Nashville Railroad Company claiming title under the Pensacola Railroad Company, which derived its title under the Pensacola & Louisville Railroad Company. And the said Louisville & Nashville Railroad Company shall within sixty days plead to said action.

(Indorsement:) Richardson *vs.* Sullivan. Agreement. Filed and entered by consent April 23rd, 1886. F. E. de la Rua, clerk.

And afterwards, to wit, on the 6th day of December, in the year of our Lord one thousand eight hundred and eighty-six, the defendant, The Louisville & Nashville Railroad Company, filed its pleas in said cause in words and figures following:

Circuit Court, State of Fla., Escambia County.

WILLIAM RICHARDSON, as Trustee of Mary C. Richardson,
vs.
LOUISVILLE & NASHVILLE RAILROAD COMPANY.

The defendant, by Gaylord B. Clark and R. L. Campbell, its attorneys, for plea to the plaintiff's declaration says it is not guilty of the wrong and injury therein mentioned.

GAYLORD B. CLARK AND
8 RICHARD L. CAMPBELL,
Attorneys for Defendants.

STATE OF FLORIDA,
Escambia County.

E. O. Saltmarsh, agent of the above-mentioned defendant, being duly sworn, says he believes the foregoing plea to be true.

E. O. SALTMARSH.

Sworn to and subscribed before me this 30th day of November, A. D. 1886.

[SEAL.] J. M. ROBERTS, *N. P.*

(Indorsement.) W. Richardson, trustee, &c., *vs.* Louisville & Nashville Railroad Company. Pleas. Filed December 1st, 1886. F. E. de la Rua, clerk circuit court.

And afterwards plaintiff filed a replication to defendant's said plea, taking issue thereon; which said paper has been misplaced and cannot be found.

And afterwards, to wit, on the — day of April, in the year of our Lord one thousand eight hundred and ninety-four, at a term of the circuit court of the first judicial circuit in and for the county aforesaid, held at the city of Pensacola, came the said plaintiff and
9 the said defendants, by their respective attorneys, and thereupon came a jury, to wit, Ben. de la Rua, Chas. Le Baron, Frank Hatton, W. M. Holland, W. W. Syfan, and J. George White, who, being duly elected, tried, and sworn the truth to speak upon the issues joined, having heard the evidence, the charge of the court, and the argument of counsel, and having considered of their verdict, upon their oaths do say: "We, the jury, find for the defendant."

And upon the same day, to wit, on the — day of April, in the year of our Lord one thousand eight hundred and ninety-four, the judgment of the court upon the said verdict was entered in the words and figures following, to wit:

"Wherefore it is considered by the court that the defendant do have and recover of and from the plaintiff the sum of $— costs in and about their said suit expended and have execution therefor."

And after the expiration of said term, to wit, on the 16th day of June, in the year of our Lord one thousand eight hundred and ninety-four, by virtue of a special order to that effect made, the said plaintiff made up and tendered his bill of exceptions, which *were* settled and signed by the judge and ordered to be made a part of the record; which said bill of exceptions is in the words and figures following, to wit:

10 In the Circuit Court of Florida, First Judicial Circuit, Sitting in and for the County of Escambia, April Term, A. D. 1894.

Be it remembered that at the said term of said court a cause therein pending, wherein William Richardson, trustee, was plaintiff and The Louisville & Nashville Railroad Company and M. H. Sullivan and Emily S. Sullivan, as executor and executrix of the estate of D. F. Sullivan, deceased, were defendants, came on to be heard before the Honorable W. D. Barnes, judge of said court, at which day came the said parties by their respective attorneys.

The plaintiff produced and offered to read in evidence the paper hereinafter following, purporting to be an original grant by Alexander Ramirez, intendent, &c., the plaintiff, in connection with said grant, offering to prove the execution of the same; but to the intro-

duction of the same in evidence the defendants did then and there object, because—

The grant, so far as it relates to the *locus in quo*, was a mere license to Pintado to use the property in a particular way and vested in him no sufficient title upon which to recover in ejectment.

Because said grant, so far as it relates to the *locus in quo*, was not an exclusive grant of the property occupied by the defendant.

11 Because said grant, so far as it relates to the *locus in quo*, was not within the delegated authority of the officer who attempted to grant the same.

Because said grant, so far as it relates to the *locus in quo*, is not one which was validated or recognized by the treaty between the United States and Spain.

Because it is not shown that Alexander Ramirez had the power or authority to make said grant, so far as it related to the *locus in quo*.

And said judge did then and there consider and decide that said objections ought to be sustained, and sustained the same and refused to allow the said paper to be read in evidence, and the same was not read in evidence; to which decision and refusal the plaintiff then and there excepted.

The said paper so offered was as follows:

12 *Titulo de Concecion a Favor del Capitan Don Vicente Sebastian Pintado de* 100,000 *Arpanes Planos de Tierra y Agua en Seis Diferentes Trechos, Todos Cituados en la Florida Occidental.*

Ano de 1817.

13 Un quartillo. Sello quarto, un quartillo, anoa de mil ochocientos diez y seis, y mil ochocientos diez y siete.

Dn Vincente Sebastian Pintado cap'n de infana, Agrimerral gral de la Florida Occidental, actualmente en esta ciudad pa el arreglo del Remo de tierras Realengas de esta Isla de Cuba y dos Florida*pr* pr disposicion del Sor. Dn. Alexandro Ramirez Intendente del Exto, superintendte gral. subdenegdo de las dchas Islas y Provincias con anuencia del Exmo Sor Capitan de las mismas.

Porquanto ha tenido a bien el dcho Sor Sperindte gral Sobdo acceder a mi inetancia de diez y nueve de Noviembre ultmo y servidose SSa pr su superior drecreto de site del que rige, en conformidad de lo expuesto a mi favor el dia primero del mismo pr el Sor Oidor Honorario Fiscal de Rl Hacienda, concederme seis de los solares qe en el ano de mil ochocientos y trece mando trazar el ayuntamiento qe hubo en Panzla, senalandos con los Nos. 11, 13, 14, 15, 16, y 18 otra portion de terreno de doscientos quatro pies, Ingleses, y dos pulgs de frente a la Plaza que se nombro de Sevilla y despues de Fernando 70 con la profundidad hasta el Mary prolongacion dentro de la Bahia hasta el extremo del placer o banco de arena, conforme al plano qe presente con la misma fecha de mi instancia,

con mas diez mil arpsplancos de las tierras realengas de a a
14 Florida Occidl. en los parages qe designase y arreglado a la descripcion qe hiciese y Planos figurativosqe presentase, mandando se me librase el titulo de los solares y esacio referidos, segn el pano presentado, y el de los diez mil arps luego que presentase los que habia ofreciddo. Portando pa qe se me pueda librar el titulo en forma con arreglo a lo mandado y al tenor y sentido de mi peticion, Expongo, qe los referidos diez mil arps planos qe solisite estan contenidos en seis diferentes trechos de tierras y agua, conforme a los seis Planos qe pr doplicado acompanen, cuyas situaciones, linderos, confines naturales y artificiales extencion y area de cada termino a de pr si, son como sige.

(Plano A, 1,181 arpanes.)

Un mil ciento ochenta y un arpanes planos en la parte del Oeste de la Isla de Sta. Rosa, empezando el lo mas occidental de su punta pr este lado. llamada punta de siguenza, a la entrada del puerto de Panzla, y estendiendose hacia el Este quatro millas trestres Inglesas, y teminadose al fin de ellas pr una linea que atraviesa dcha Isla de Mar a Mar, en direccion del Norte y Sur del Globo, con todo lo que encierre este espacio arido y esteril limitado por los aguas del Mar por el Norte, Sur y Oeste y en toda la entedcha distancia de quatro millas terrestre Inglesas, que por poco y variable ancho que tiene la Isla por dcha parte solo contiene los un mil ciento ochenta y un arp-nes planos sin presicion por ser limites
15 arsifinios o casi arsifinios; todo conforme al plano anexo senalado con la letra A.

(Plano B, 19 arpanes.)

Diez y nueve arps planos en esros terrenos situado al extremo occidental de la Poblacion de panzla. Haciendo frente a la Habia del mismo nombre, con la qe confina pr la parte del Sur, pasando por dentro del terreno al Arroyo de la Arguada o de las Lavanderas desde suembocadura en el Mar hasta las tierras concedidas o vendidas a Dn Pedro Reggio, con las que, y otras delos Sres Forbes y Compania, linda el terreno mencionado por la parte del Norte pr la del Oeste linda con tierra del Sor. Brigadier Dn. Franco Maximiliano de Sn Maxeny une porcion del segdo Arrepo de la Aguada qe sirve limite natural por un corto trecho de su boca acia adentro; y por el lado que mira al Este confina con el antedcho esxtremo occidental de la Poblacion de Panzla, dexando si embargo entre esta y el terreno el paso y celles necesarious con forme dumuestra mas claramente el plano que acompna sena lado con la letra (B) en el que va figurado el terreno anotadas les dimensiones de sus lados en pies y pulgs Inglesas pr ser medidas usadas por los solares y calles de aquella Poblacion, las direcciones de los limites segn la brxula, la declinacion Nordesta, y todos los otros, cotos terminos y confines naturales y artificiales.

(Plano A, 718½ arpanes.)

Una extencion otrecho frecho de la Bahia de Penla cuya
16 superficie del agua es igual a una area de setecien tos diez y ocho y medio arpanes planos, tomado entre la punta del Este de la Boca del Estero de Casa Blanca Vulgarmente llamado Bayu Chico y la punta del Oeste de la boca del Riachuelo o Estero del Texar, vulgarmente llamado Bayu del Telxar, una line tirada en direccion del Sueste de la aguja, noventa y cinco perchas de Paris dentro del Mardesde la antedcha, primera punta, y otra lines de oncien perchas dhas de largo contadas desde la segunda punta mencionada dentro del Mar, tambien al mismo rumbo del Sueste de la aguja, lo qe incluye todo el frente de una a otro boca de los Esteros de Casa Blanca y Texar, entre los que se halla la publacion de penzla ; todo con arreglo y segn el plano unido, senalado con la letra (C) formado para mayor claridad y mejor inteligencia, en el qe va representada la figura que forma en el agua dcho trecho y los limites dentro de la Bahia de Penzacola, debiendo ser los de la parte de tierra y Playa que hay entre dcho dos puntos de las bocas de los mencionados Esteros, las curvas que produce la orilla del agua de la merea mas alto entiempo sereno, y con la profundidad desde la superficie del agua del Mar hasta diez pies Inglises mas abaxo del actual fondo o acia el centro de la tierra, en todo el espacio que abraza la figura representada en dch plano (C) conciderandola como un solido pues qe tiene las tres dimenciones de longitud, latitud y profundidad, pero con exclusion de aquella parte que me fue con-
cedida pr el titulo de los relacionados solares y qe va figurada
17 en el adjunto Plano (C) y la qe ocupa el muella de los Senores Forbes y Compania, tambien representado en el Pano, y de la que estan en posecion desde muchos anos; todo en plena propriedad y con el fin de construir Muella Casillas de Banos, quedando a salvo no solo el derecho de S. M. sino tambien el de! publico siempre que convenga y se intente construir Muelles con cualesquiera fondos municipales o comunes entendienose la exclusiva solo en con respecto a individuos particulares.

(Plano D, 2,281½ arpanes.)

Un terreno de dos mil doscientos ochenta y uno arps planos, cituados sobre la margen oriental del Rio Escambia o mas bien de de su brazo del Este que forma la Isla llamada Antonio concedida ultimamente por la subdelegacion de Penzacola a Dn francisco Bonals, a como diez y seis millas de la embocadura de docho Rio en la Bahia de Escambia continuacion de la de Panzacola unas veintidos acio el NNo de la Poblacion de Penzacola, lindendo por la parte Septemtrional y oriental con tierras realengas por la meridional con tierras recientemente concedidas a Dn Tomas Villaseca por el Sor subdelegdo de aquella provincia, por la occidental confina con el antedcho, brazo del Rio Escambia, como mas claramente se demuestra por el Plano (D) que antecede.

(Plano E, 5,000 arpanes.)

Otro terreno de cinco mil arpenas cituado sobre la margen occidental del dicho Rio Escambia entre este y el Arroyo llamado
18 PINE BARREN a como treinta y une millas Inglesas acia el N. O. ½ N. de la Poblacion de Penzacola confinando por un lado con el mismo Rio Escambia, con un mil cretientas perchas de Paris de frente a dicho Rio segen el curso que tenga acia arriba, contadas desde su confluencia con el mencionado Arroyo Pine Barren con el que linda por otro lado, y por la domas con tierras realengas como mas claramente demuestra el Plano (E) en que va figurado el terreno, y con exclusion de la parte anegediza.

(Plano F, 800 arpenes.)

Otro terreno de ochocientos arpenes planos complemento de los diez mil que se me han concedido, cituado en el margin Oriental del referido rio Escambia a unas treinta y seis a treinta y ocho millas Inglesas acia el NNo de la Poblacion enfrente de las que ha escojido Junan Malagosa para solisitarlas, que estan en el paraje conocido per TURBINS BLUFF.

Los diez mil arpenes referidos son de los usados en aquella Provincia y que usaran mientras no se haga otro arreglo, y se compone cada uno de cien perchas quadradas de superficie planas, y la percha lineal es de diez y ocho pies de Paris, segun costumbre agraria de la retxocedida provincia de la Luisiana de donde paso a la Florida Occidental quando la conquistaron las armas Espanola.

Havana doce de Diciembre de mil ochocientos diez i DUPdo siete.

[FIRMA.] VINCENTE SEBASTIAN PINTADO.

19 Quedan registrados los Planos y documentos antecedentes desde el fol. recto 2, hasta vuelta del fol. 5 del Libro M. M. destinado a este fin mientras se instala oficina en lugar conveniente y desclave el Archivo Havana trece de Diciembre de mil ochocientiente diez y siete.

[FIRMA.] VINCENTE SEBASTIAN PINTADO.

20 Sello tercero dos reales anos de 1816 y 1817.

Don Alexandro Ramirez, intendente de Ejercito Ysperintendente General, subdelegado de Real Hacienda de Esta Isla de Cuba y ambas Floridas, presidente de tribulal de Cuentas y de la Junta de Diezmos, superintendente del Ramo de Cruzada, Juez Privativo de Arrivadas, y protector de la Real Loteria, gefe superior e inspector de la Real Eacerria de Tabacos, &.

Por quando Dn Vincente Sebastian Pintado, Capitan de Infanteria, Agrimensor gral. de la Florida Occidental ha presentendo Instancia a esta Intenda de Exto-y Superintenda Gral Subdelegada en diez y nueve de NovRE. ultimo haciendo presente los concideables gastros que se le han originados pa su translacion a esta ciudad

de mi orden con acuerdo Exmo. Sor. Capn. Gral. pa esuntos interesantes al servicio de S. M. Que Dios Gue. y la de hacer venir su familia, sacrificando sus pripiedades, y pide qu por via de indemnizacion se le concedan en plena propiedad seis solares realengos en la Poblacion de Penzacola de los que trazaron en el ane de Nil ochocientos trece por disposicion del ayuntamiente que allihubo, situado entre las plazas que en el arrglo gral. qe se hizo en el ano
min ochicientos ocho se nombraron la une de FERNANDO
21 Septimo y la otra de Sevilla, senalados en el plane qe se
formo con los numeros once, trece y catorce, quin ce, diez y esis, y diez y echoey el espacio de terreno que media entre la citada plaza de Sevilla, y la orilla del mar determinada por la merea alta en tiempo sereno; las esquinas de Beltran Souchet, Tomas Villaseca, y el terreno recervado pa Hospital, presntado al efecto el plano figurative con los indicaciones necesarias con diez mil arpenes planos de tierra vacantes en la Florida Occidental en los parajes que desiguare, y con arreglo a los planos figuratives que presentare y descripcion que haga de elles; y habiendose dade vista al Sor. Oidor Fiscal a de Rl Hacienda por decreto de vinte y ocho de Noviembre hecho cargo de la certeza de lo expuesto por el citado Agrimensor, de sus constantes meritos, y empenos que ha contraido para trasladarse a esta ciudad con su familian en la que expresa serle imposible el que pueda subsistir con el corto sueldo disfruta, presto su anuencia pare que se acceda a su solicitud; en su consequencia provehi auto en siete del corriente del tenor siguiente.

"Visto: De conformidad con el Sor. Piscal y atendien do al merito y buenos servicios del Capitan Dn Vincente Sebastian Pintado le concedo los seis solares y los diezmil arpanes realengos qe pide en la Florida Occidental, sin perjuicio de tercero y con calidad de febricar los unos, y cultivar o beneficiar los otros del modo mas
conveniente; segun las disposiciones de la materia pa el for-
22 mento de uquella Provincia que me esta encargad pr S. M.
Librese titulo de los solares, segun el plano presentado, y el de las tierras, luego que presente el que ofrece con su descripcion, bajo su responsabilitad en esta parte como Agrimensor gral. que es de la misma provincia cuyo Subdelegado y Ministro de Real Hacienda se libraran las ordenes consiguientes."

En cuya consequencia se le despacho titulo en diez del corriente de los seis solares y espacio de terrenos referidos, y con fecha del doce presento por duplicado le los planos figurativos de los diez mil aprenes planos de tierra con la correspondiente descripcion, demarcidos en seis dieferentes porciones cuyas cituaciones, linderos terminos y confines naturales, y artificiales, extencion y area de cada una de por si, explica del modo siguiente.

El primer plano senalado con la letra (A) comprende un mil ciento ochenta y un arpenes planos de tierra situados en la parte Oeste de la Isla de Santa Rosa empezando en lo mas occidental de su punta por este lado llamada punta de Siguenzaa la entrada del Puerto de Penzacola, y entendiendose acia el Este quatro millas terrestre Inglesas, y terminandose a fin, de ellas pr una linea que atraviensa dcha. Isla de mar a mar, por el Norte, Sur y Oeste en

toda la antedcha, distancia de quartros millas terrestre Inglesas que por el poco y variable anchoque tiene la Isla por dcha, parte solo contiene los un mil ciento ochenta y un arpenes planos sin presicion por ser limites arsifinioso casi arcifinios.

23 El segundo senalado con la letra (E) contiene diez y nueve arpenes planos en un terreno cituado al extremo occidental de la poblacion de Penzacola, haciendo frente a la Bahia del mismo nombre con la que confina por la parte del Surpasando pr dentro del terreno el Arroyo de la Aguanda, o de las Lavanderas desde su Embocadura en el mar hasta las tierras concedidas, o vendidas a Dn. Pedro Reggio, con las que, y otras de los Sres. Forbes y Compania linda el terreno mencionado por la parte del Norte, por las del Oesta linda con tierras del Sor. Brigadier Dn. Francisco Maxo, de Sn. Maxent, y una porcion del segundo Arroyo de la Aguada que sirve de limite natural por un corto trecho de su boca aci adentro, y por el lado que mira al Esta confina con el antedicho extremo occidental de la poblacion de Penzacola, dexando sinembargo entre esta y el terreno el paso y calles necesarias, conforme demuestra mas claramente el citado plano, en el que va figurado el terreno anotadas las dimenciones de sua lados en pies y pulgadas inglesas, por ser medida usada para los solares y calles de aquella poblacion, las direcciones de la brujula la declinacion Nordeste, y todos los otros terminos y confines naturales y artificiales.

El terreno senalado con la letra (C) es una extencion o trecho de la Bahia de Penzacola, cuya superficie de agua es igual a una area de stecientos diez y ocho y medio arpenes planos tomado

24 entre la punta del Este de a Boca del Estero de Casa Blanca vulgarmente llamado Bayu Chico y la punta del Oeste de la boca de Riachadlo o Estero del Texar, vòlgarmente llamado Bayu del Texar y una linea tirada en direcion del Sueste de la aguja, noventa y cinco perchas de Paris dentro del mar desde la antedcha, primera punta, yo otra linea de cien perchas dchas, de largo contadas desde la segunda punta menciona da dentro del mar tambien al rumbo del Sueste de la aguja lo que incluye todo el frente de una etra boca de los Esteros de casa blanca y texar entre los que se hala la Poblacion de Menzacola, todo con arreglo y segun el plano unido formado pa mayor claridad, y mejor inteligencia, en el qe va representada la figura qe forma en el agua dicho trecho, y los limites dentro de la Bahia de Panzacola, debiendo ser los de la parte de tierra, y playa que hay entre dichos puntos de las bocas de los mencionados Esteros la curba qe produce la orilla del agua de la marea mas alta en tiempo sereno, y con la profundi dad desde la superficie del agua del hasta diez pies ingleses mas abjo del actual fondo hacia el centro de la tierra en todo el espacio que abraza la figura representada en dicho plano (C), considerandola como un solido, pues que tiene las tres dimenciones de longitud, latitud, y profundidad, pero con exclusion de aquella parte que le fue concedidad por el titulo de los relacionados solares que va figurada en el, y la que ocupa el muelle de los Sres. Forbes y Compania tambien

25 representada en dicho plano, y de las que estan en posesion desde muchos anos. Todo en plena propiedad y con el fin de

construir muelles, y casillas para banos, quedando a salvo no solo el dro. de S. M. sino tambien el del publico siempre que convenga, y se intente construir muelles con cualesquiera fondos municipales, o comunes, entendienose la Exclusion solo con respecto a individuos particulares.

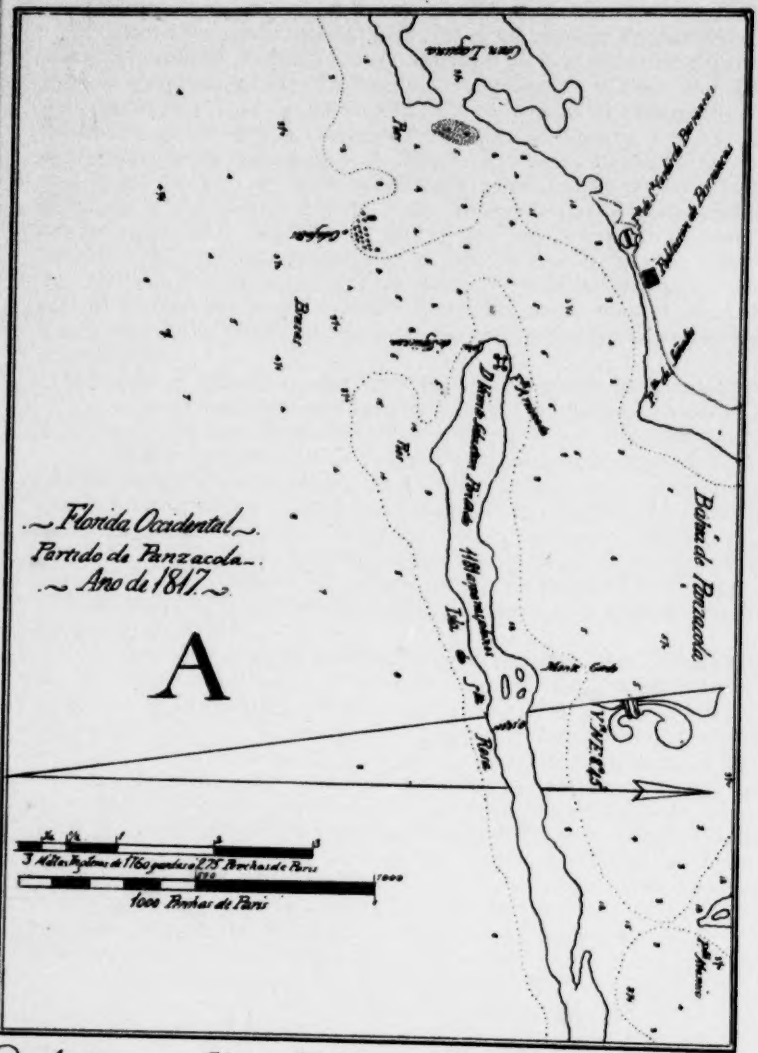
El quarto senalado con la letra (D) es un terreno de dos mil doscientos ochenta y uno y medio arpenes planos situados sobre la margen oriental del Rio Escambia, o mas bien de si brazo del Este que forma la Isla llamada de Antonio concedida ultimamente por ia subdelegacion de Penzacola a Dn. Francisco Bonal a como diez y seis mellas de la embocadura de dcho. Rio en la Bahia de Escambia, continuacion de la de Panzacola, y unas vinte y dos acia el NNO. de la Poblacion de dcha. plaza, lindando por la parte septemtrional y oriental con tierras realen gas por la meridional por y tierras receintemente concedidas a Dn. Tomas Vollaseca, por el Sor. Subdelegado de aquella Provincia, y por la occidental confina con el antedicho brazo del Rio Escambia como mas claramente demuestra dcho, plano en que estan figurados sus limites naturales y artificiales.

El sexto v altimo es etro terreno senalado con la letra (F) de ochocientos arpenes planos sitados en la margen oriental del
26 referido Rio Escambia a unas treina y seis a treinta y ocho millas inglesas acia el N. NO. de la poblacion enfrente de las que ha escojido Juan Malagosa pa solisitarlas, estan en el paraje conocidos por Turbine Bluff con los quales se completa los diez mil arpenes planos de tierra de qe va hecha mencion medidos a la percha lineal de Paris de diez y echo pies, y de cien perche quadradas cada arpan ; segun costumbre agreria de retrocedida Provincia de Luisiana, y la de la Florida occidental desde que la reconquistaron las armas de S. M.

Por tanto, en use de las facultades qe el Rey Ntro Sor. Dios le gue. me tiene conferidas otorgo y concedo en su Rl nombre gratuitamen al expresado Capitan y Agrimensor gral. Vicente Sebastian Pintado los diez mil arpenes planos de tierra y agua contenidos y demarca dos en los seis planos figurativo que por duplicado presento, y bajo los linderos terminos y confines naturales y artificiales que en ellos se demuestran y van relacionados, y les transfiero absoluto dominio para que como suyos propios los posea, disfrute o enagene a su voluntad sin perjuicio de tercero que mejor dro. tenga ni de las regalias soberanas, con arreglo a lo prevenido en el auto insecto y clausulas expresadas. En felde lo cual he mandado despachar el presente firmado de mi mano sellado con el escudo de las Armas Reales de uso en esta Secretaria, y refrendado por el Sr. Comisario de gerra honorario Dn. Pedro Carambot, Secretario por S. M.
27 de esta intendenciado Exercito Superintendenci gral. Subdelegada, en cuya oficina quedara registrada y tomada la razon ; se agregara a este titulo el duplicado de los seis planos figurativos y descripcion de los mismos.

Dado en la Habana a diez y siete Diciembre de mil ochocientos diez y siete.

ALEXANDRO RAMIREZ.
PEDRO CARAMBOT.

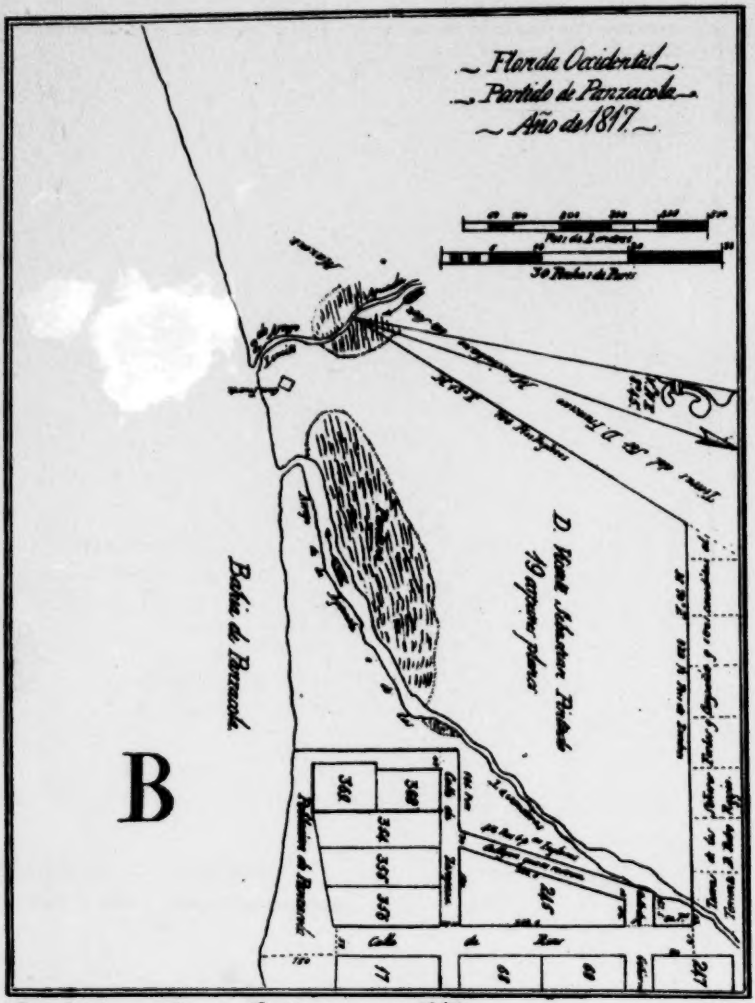


Duplicado.

Havana 12. de Diciembre de 1817.

No 25
Richardson
Uñarg
p. 28

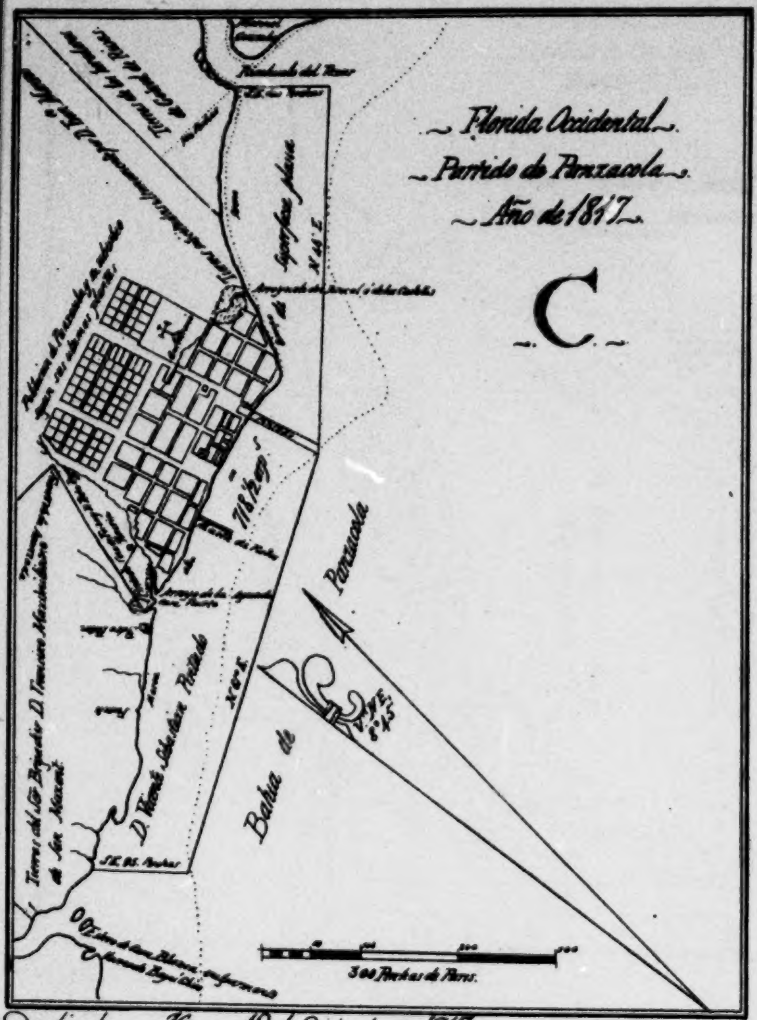
Vicente Tolsa y Pintado



Duplicado. Havana 12 de Diciembre de 1817.

No. 251
Relacion
de
L. N. Rls
p. 29

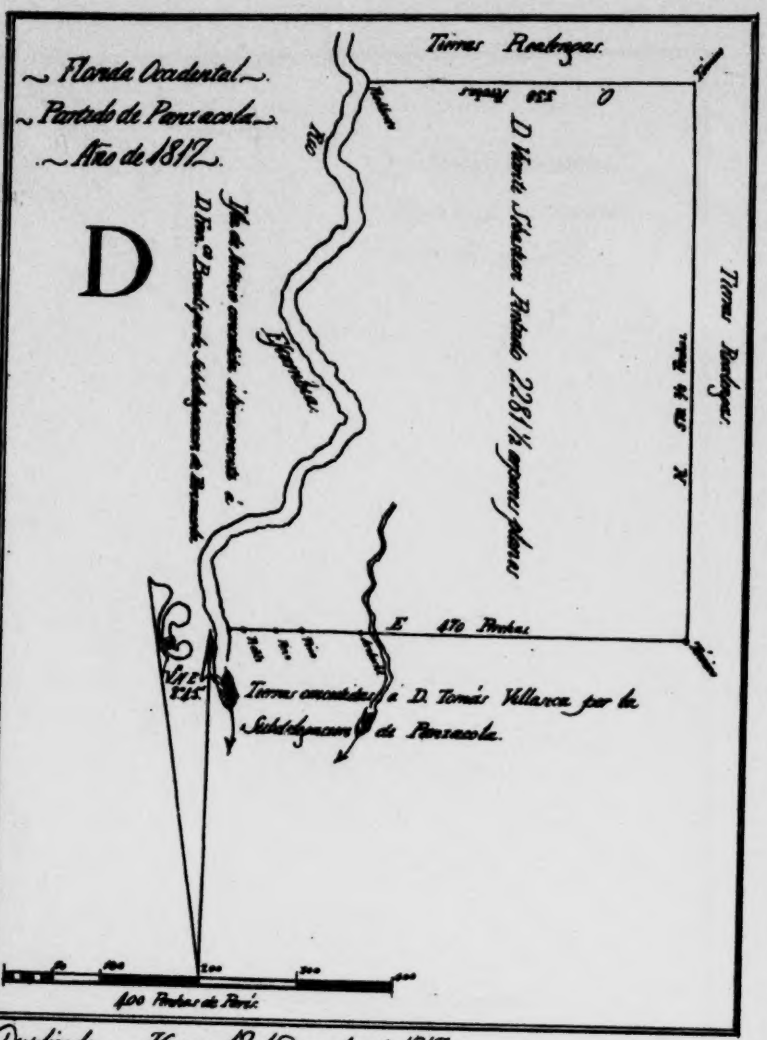
Vicente Sebastian Pintado



Duplicado. Havana 12 de Diciembre de 1817.

No. 25.
Adelantado
de
la N. Orleans
$ 30

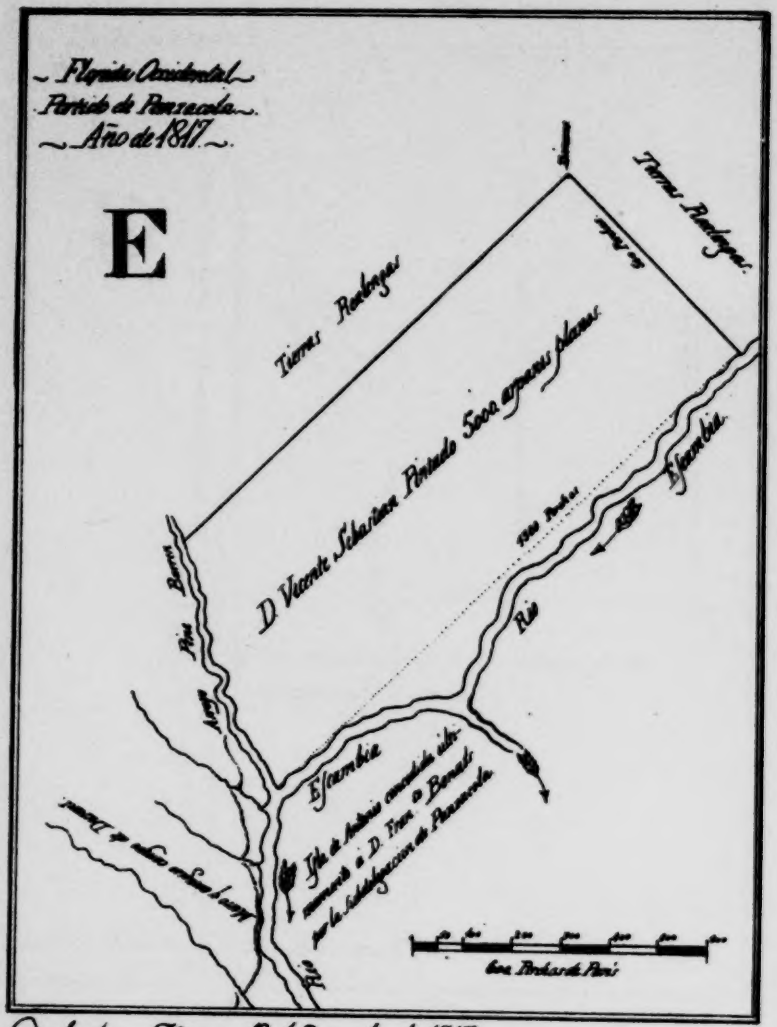
Vicente Sebastian Pintado



Duplicado ~ Havana 12 de Diciembre de 1817 ~

No 251
Bidondeau } p 31
de Vivero }

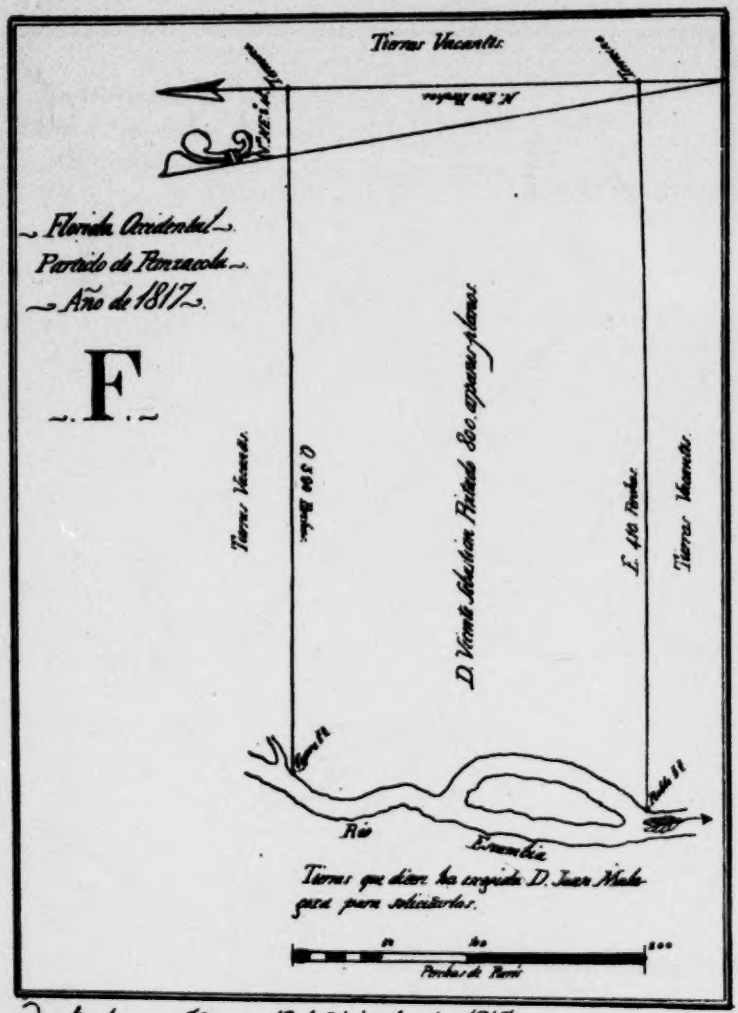
Manuel Sánchez Pintado



Duplicado. Havana 12 de Diciembre de 1817.

No 25
Recibido } $ 32
Arredo

Vicente Sebastian Pintado



Duplicado. Habana 12 de Diciembre de 1817.

No 251
Rectandum } p. 33
de Tierras

Vicente Sebastián Pintado

Queda tomada la razon del Titulo que antecede y registrado en el Libro destinado a esto fin en la Secretaria de mi cargo. Habana fecha ut retro.

CARAMBOT.

(Here follows diagrams marked pp. 28, 29, 30, 31, 32, & 33.)

34 And plaintiff thereupon offered in evidence a translation of the aforesaid paper, which translation was admitted by the defendants to be a correct translation of said grant, but to the introduction thereof in evidence they then and there objected; that for the various reasons stated in the objections to the original of said grant the translation thereof was irrelevant and immaterial, and because the original thereof is void for the various reasons stated in the above objections to said original; and the said judge did then and there consider and decide that said objections should be sustained and did sustain the same, and the said translation was not read in evidence; to which decision and refusal to admit the same in evidence the plaintiff then and there excepted.

The said translation was as follows:

35 *Translation of Pintado Grant.*

(Royal seal.) Un quartillo. Sello quarto, un quartillo: Years 1816 & 1817.

Don Vicente Sebastian Pintado, captain of infantry, surveyor general of West Florida, acting in this city for the adjustment of royal lands of this island of Cuba and the two Floridas by order of Senor Don Alexandro Ramirez, intendant of the army, superintendant general subdelegate of the same island and provinces by the condescension of the most excellent captain general of the same.

Inasmuch as the superintendent general, subdelegate, has held it well to accede to my request of the 19th November last, and granting the favor under his lordship by his superior decree of the 7th of that month, in conformity with that expressed in my favor the first day of the same by senor auditor and honorary fiscal of the royal property, granting me six of the lots which, in the year 1813, it was ordered to be drafted by the ayuntamiento, which sat in Pensacola, indicated by the numbers 11, 13, 14, 15, 16, 18; another parcel of land of 204 feet English, and 2 inches of front on the plaza, which is named of Seville, and afterwards of Ferdinand VII, with the depth as far as the sea, and prolongation within the bay as for as the extreme of the place or bank of sand, conformably to the plan which I presented at the same date with my application, besides 10,000 arpents superficial of the royal lands of West Florida in the places which are designated and conform to the description which I shall make, and figurative plans which I shall present, command-
36 ing to be delivered to me the title of the lots and space referred to, according to the plan presented, and that of the

10,000 arpents, when I shall present those which I had offered. Forasmuch: For that there should be delivered to me the title in form, according to the rule and precept and the tenor and effect of my petition, I show: That the aforesaid 10,000 arpents superficial are contained in six different tracts of land and water, conforming to the six plans which in duplicate accompany, whose situations, lines, boundaries, natural and artificial, extensions, and area of each terminus are as follows:

(Plan A, 1,181 arpents.)

Eleven hundred and eighty-one arpents superficial in the western part of the island of St. Rosa, beginning in the most western part of the point on that side named Point Siguenza, at the entrance of the port of Pensacola, and extending to the east four miles (statute) English, and terminating at the end of them by a line which crosses said island from sea to sea in the direction north and south of the globe, with all that is contained within that arid and sterile space bounded by the waters of the sea north, south and west; in all the aforesaid distance of four miles (statute) English, and with the small and variable breadth which the island has about the said part only, containing 1,181 arpents superficial without exactness, the limits being arcifinios or nearly arcifinios, the whole conforming to the annexed plan designated with the letter A.

(Plan B, 19 arpents.)

Nineteen arpents superficial in another tract situated at the extreme west of the population or town of Pensacola, fronting on the bay of the same name by which it is bounded on the south,
37 passing within the tract is the rivulet of the Aguada or of the Washerwoman, from its mouth into the sea as far as the land conceded or sold to Don Pedro Reggio, with which, and the others of the Messrs. Forbes & Co., the said land bounds on the north, on the west bounding with the lands of Senor Brigadier de Francisco Maximiliano San Maxent, and a portion of the second rivulet of the Aguada, which serves as a natural limit for a short distance from its inner mouth, and on the side which looks to the east, bounding with the aforesaid extreme western part of the town of Pensacola, leaving, however, between that and the land, the necessary passages and streets, as is clearly shown by the plan accompanying, designated by the letter B, upon which will be seen figured the land mentioned, the dimensions of its sides in feet and inches English, being the measure used for the lots and streets of said town, the direction of its limits according to the compass, the declinations northeast of that, and all the other sides, boundaries and confines, natural and artificial.

(Plan C, 718½ arpents.)

An extension or space of the bay of Pensacola, whose superficies of water is equal to an area of 718½ arpents superficial between the

eastern point of the mouth of the creek of Casa Blanca, commonly called Bayou Chico, and the western point of the mouth of the rivulet or creek of Texar, vulgarly called Bayou Texar, and a line drawn in the direction of southeast of the needle 95 perches of Paris within the sea from the aforesaid first point, and another line of 100 of said perches in length, beginning from the second point mentioned within the sea, also from the same point of southeast
38 of the needle; the which includes all of the front from one to the other mouth of the creeks of Casa Blanca and Texar, between which is found the town of Pensacola, the whole conformably and according to the plan presented, designated by the letter C, formed for greater clearness and better understanding, in which is represented the figure which the said lands form in the water and the limits within the bay of Pensacola, being those of the part of land and shore which makes between the said two points of the mouths of the two mentioned creeks the curve which makes the edge of the water of the sea at the highest tide in calm weather, and with the depth from the surface of the water of the sea as far as ten feet English below the actual bottom or towards the center of the earth, in the whole, the space which the figure represented in said plan C embraces, considering it as a solid, since it has the three dimensions of latitude, longitude and depth; but with exclusion of that part which was conceded to me by the title of the lots and which is figured in the annexed plan C; and that which the wharf of Messrs. Forbes & Co. occupies, also represented in the plan, and of which they have been in possession for many years; the whole in full property and for the purpose of constructing wharves and houses for bathing, reserving and saving not only the right of His Majesty, but also that of the public, whenever it becomes convenient, and it be designed to construct wharves with whatsoever funds, municipal or common, intending the exclusion alone with respect to particular individuals.

(Plan D, 2,281½ arpents.)

A parcel of land, 2,281½ arpents superficial, situated upon
39 the eastern margin of the River Escambia, or more certainly on its east branch, which forms the island named Antonio, granted formerly by the subdelegation of Pensacola to Don Francisco Bonal, and about sixteen miles from the mouth of said river, in the bay of Escambia, a continuation of that of Pensacola, and twenty-two miles in a line north-northwest of the town Pensacola, bounded north and east by royal lands, south by lands recently conceded to Don Tomas Villaseca by the senor subdelegate of that province, and on the west confined by the aforesaid arm of the River Escambia, as is more clearly shown by the foregoing plan D.

(Plan E, 5,000 arpents.)

Another tract of land of 5,000 arpents superficial, situated on the western margin of the said River Escambia between it and the

creek named Pine Barren, and about thirty-one miles in a line northwest, one-quarter north, of the town of Pensacola, bounded on one side with the same River Escambia, with 1,300 perches, Paris, front on said river, according to the course which it holds above or upward, rec-oning from its confluence with the aforementioned creek Pine Barren, with which it is bounded on the other side, and for the rest by the royal lands as will be more clearly shown by plan E, in which is figured the land, and with the exclusion of the part overflowed.

(Plan F, 800 arpents.)

Another tract of land of 800 arpents superficial, the complement of the 10,000 which has been conceded me, situated on the eastern margin of the aforesaid River Escambia, 36 to 38 miles, En-
40 glish, north-northwest of the town, fronting the lands which have been selected by Juan Malagoza to petition for, and which are at the place known as Turbin's Bluff.

The 10,000 arpents referred to are of those used until now in that province, and which will be until some other rule is established, and each arpent is composed of 100 square perches

Un quartillo.

(Royal seal.) Sello quarto, un quartillo, years 1816 & 1817.

of plane superficies, and the lineal perch is eighteen feet of Paris, according to the field custom of the retroceded province of Louisiana; from thence it passed to West Florida, when it was conquered by the Spanish arms.

Duplicate.

Havana, December 12, 1817.

VICENTE SEBASTIAN PINTADO.

The foregoing plans and documents remain registered from the folio 2 and onward as far as turning of folio 5 of Book M. M., used for that purpose, meanwhile it is installed in the office in a convenient place and declared of the archives.

VICENTE SEBASTIAN PINTADO.

41 (Royal seal.) Sello tercero, two reals, years of 1816 & 1817.

Don Alexander Ramirez, intendent of the army and superintendent general, subdelegate of royal exchequer of the island of Cuba and both Floridas, president of the tribunal of accounts and of the board of tithes, superintendent of the branch of the Crusade, etc.

Whereas, Don Vincente Sebastian Pintado, captain of the infantry and surveyor general of West Florida, has presented his petition to this intendency general subdelegate on the 19th November last, showing the considerable expenses which arose to him from his re-

moval to this city, by my order with the advice of the most excellent captain general, for matters of interest to the service of His Majesty, whom God preserve, and having to take his family from there, and sacrificing his property, prays, by way of indemnification, that there be conceded to him in full property six royal lots in the town of Pensacola of those which were drawn in the year 1813 by order of the ayuntamiento, which was had there, situated between the plazas, which in the general order which was delivered in the year 1808, were named, the one Ferdinand VII, and the other Seville, designated in the plan which was made with the numbers 11, 13, 14, 15, 16, 18, and the space of ground which measures between the said plaza of Seville and the shore of the sea, marked by the high tide in calm weather; the corner of Beltran Souchet, Tomas Villaseca, and the lands reserved for a hospital; presenting to that effect the figurative plan with the necessary indications; besides 10,000 arpents superficial of vacant land in West Florida in those plans which are to be marked out, and in conformity with the figurative plans which he has to present and the description which he may make of them, and having given examination of them to senor the auditor fiscal of royal exchequer by decree of the 20th of said November, he satisfied of the certainty of that set forth by the said surveyor, of his well-known merits and obligations which he contracted by his removal with his family to this city in which he expresses it to be impossible that he can subsist with the scanty salary he enjoys, gave his consent that his petition should be granted. In consequence of which, I made a decree in the 7th instant of the following tenor: "Visto. In conformity with the senor fiscal, and in consideration of the merits and good services of Captain Don Vicente Sebastian Pintado, I grant him the six lots and the 10,000 arpents royal lands which he seeks in West Florida, without prejudice to a third, and with the condition to build on the ones and cultivate or improve the others in the most convenient manner; according to the disposition of the matter for the peopling of that province, which is given me in charge by His Majesty. Let title be delivered for the lots according to the plan presented and for the lands immediately that he presents the plan which he offers with its description, under his responsibility in that respect as surveyor general, which he is of the same province; to the subdelegate and minister of royal exchequer and let there be delivered the orders necessary."

In consequence of which, on the 10th instant, there was dispatched to him the title for the six lots, and the space of land referred to; and with date of 12th instant he presented duplicate the figurative plans of the 10,000 arpents superficies of land, with the corresponding description designated in six different portions, whose situations, lines, boundaries and confines, natural and artificial extensions, and area of each explain themselves after the manner following:

The first plan designated with the letter A, embraces 1,181 arpents superficies of land situated on the western part of the island

of Santa Rosa, beginning on the most western of its points, on the side named Point of Sizuenza, at the entrance of the port of Pensacola, and extending towards the east four miles English, and terminating at the end of them by a line which traverses said island from sea to sea; from north, south and west, in the whole, the aforesaid distance of four miles English, which with the small and variable width which the island has at that part, only contains the 1,181 arpents superficial, without precision, the limits being arcifinios, or nearly arcifinios.

The second, designated by the letter B, contains 19 arpents superficial in a tract, situated at the extreme west of the town of Pensacola, fronting on the bay of the same name, by which it is bounded on the south, passing through the tract is the rivulet of the Aguada, or of the Washerwoman, from its embouchure in the sea as far as the land granted or sold to Don Pedro Reggio, with which and others of the Messrs. Forbes & Co., the said lands are bounded on the north, on the west bounded by the lands of Senor Brig-
44 adier Don Francisco Maximiliano de Maxent, and a part of the second rivulet of the Aguada, which serves as the natural limits for a short distance from its inner mouth and on the side which looks to the east it is bounded by the aforesaid extreme western part of the town of Pensacola, leaving, however, between that and the land, the necessary passages and streets, as is more clearly shown by the plan referred to, and in which is shown the land, noting the dimensions of its sides in feet and inches English, by that measure used for the lots and streets of that town, the directions of the compass, the declination northeast, and all the other terminii and boundaries, natural and artificial.

The lands designated by the letter C are an extension or tract of the bay of Pensacola, whose superficies of water is equal to an area of 718½ arpents superficial, occupying between the eastern point of the mouth of the creek of Casa Blanca, commonly called Bayou Chico, and the western point of the mouth of the rivulet or creek of Texar, commonly called Bayou Texar, and a line drawn in the direction of southeast of the needle, 95 perches of Paris, within the sea, from the aforesaid first

(Royal seal.) Sello tercero, two reals, years of 1816 & 1817.

point, and the other line of 100 of said perches in length, counted from the second point mentioned within the sea, also from the same point of southeast of the needle, which embraces the whole of the front from the one to the other mouth of the creeks of Casa Blanca and Texar, between which is the town of Pensacola, the whole
45 conforming and according to the plan annexed, made for the greater clearness and understanding in which is represented the figure which the said land forms in the water and the limits within the bay of Pensacola, being that part of the land and beach which is found between the said two points of the mouths of the mentioned creeks, the curve which the shore of the water of the sea at the highest tide in calm weather makes, and with the depth from

the surface of the water as far as ten feet English below the actual bottom, or towards the center of the earth, in the whole, the space which the figure represented in the said plan C embraces, considering it as a solid, since it has the three dimensions of longitude, latitude and depth; but with the exclusion of that part which was granted him by the same title as the said lots, which is figured in it, and that which is occupied by the wharf of Messrs. Forbes & Co., also represented in said plan, and of which they have been in possession for many years. The whole in full property and for the purpose of constructing wharves and houses for bathing, reserving and saving not only the right of His Majesty, but also that of the public, at all times whenever it becomes convenient, and it be designed to construct wharves with whatsoever funds, municipal or common, intending the exclusion only with respect to particular individuals.

The fourth, designated by the letter D, is a tract of 2,281½ superficial arpents, situated upon the eastern margin of the River Escambia, or rather eastern branch,

(Royal seal.) Sello quarto, un quartillo, years 1816 & 1817.

46 which forms the island named Antonio, granted formerly by the subdelegation of Pensacola to Don Francisco Bonal, about sixteen miles from the entrance of said river into the bay of Escambia, a continuation of the bay of Pensacola, and more than twenty-two miles toward the north-northwest of that place, bounded on the western and eastern front by royal lands, south with lands lately granted to Tomas Villaseca by the subdelegate of that province and on the west confined by the aforesaid arm of the River Escambia, as will be more clearly demonstrated in the indicated plan.

The fifth, marked by the letter E, is a tract of 5,000 superficial arpents situated upon the western margin of the said River Escambia, between it and the creek called Pine Barren, about 31 miles English toward the northwest quarter north of the town of Pensacola; bounded on one side with the same River Escambia with 1,300 perches Paris of front upon it, according to the course which it holds, counting toward above from its confluence with the said creek (Pine Barren) which bounds the tract on the other side, with the exclusion of the worthless part, and for the rest by royal lands, as more clearly appears in said plan, in which are figured its limits, natural and artificial.

The sixth and last is other land, marked with the letter F, of 800 superficial arpents, situated on the eastern margin of the referred-to River Escambia, about 36 or 38 miles English north-northwest of the town, in front of that which has been chosen by James Malagoza to solicit for it, being in the place known as Turbin's bluff

47 with which he completes the 10,000 superficial arpents of land of which mention is made, measured by the lineal perch of Paris of 18 feet, and of 100 perches square to each arpent, according to the field custom of the retroceded province of Louisiana, and that of West Florida since its reconquest by the arms of His Majesty.

Therefore, in the exercise of the power which the King, our lord (whom God preserve), has conferred upon me, I grant, in his royal name, gratuitously, to be designated captain and surveyor general, Don Vicente Sebastian Pintado, the 10,000 superficial arpents of land and water contained and marked in the six figurative plans which, in duplicate, he presented, and, under the lines, termini, and confines natural and artificial, which in them are denominated and set forth; and I transfer to him absolute dominion, for that as his own, he may hold to his own use, enjoy or alienate them at his own pleasure without prejudice to a third, who holds a better right, nor of the sovereign privileges, according to what is provided in the annexed decree and the clauses expressed. In faith of which I have ordered the present title to be dispatched, signed with my hand, sealed with the escutcheon of the royal arms in the service of this secretary and countersigned by the senor commissary of war, Honorary Don Pedro Carambot, secretary for His Majesty of this intendency of the army and superintendent general subdelegate, in whose office let it remain registered and an annotation be taken; let there be affixed to this title, the duplicate of the six figurative plans and descriptions of the same.

Given in Havana, the 17th day of December, 1817.

[SEAL.] ALEXANDER RAMIREZ.

48 PETER CARAMBOT.

This receipt taken of the foregoing title and registered in the book appointed for that purpose in the secretary's office under my charge.

CARAMBOT.

Havana, Dec. 17, 1817.

(Royal seal.) Un quartillo. Sello quarto, un quartillo, years 1816 & 1817.

49 And thereupon plaintiff offered in evidence a chart of the bay of Pensacola, made by the United States Coast and Geodetic Survey, published in the year A. D. 1892, a copy of which is filed herewith, verified by the certificate of the clerk of this court, and in connection with said offer the plaintiff offered to prove by W. H. Davison, a civil engineer and city engineer of Pensacola, Florida, that the red lines on the said chart correctly designate the location in the harbor of Pensacola relative to the city of Pensacola of the lands embraced in certificate "C" of the grant aforesaid; and plaintiff offered further to prove by said witness that the white portions of the wharves as shown on said chart projecting in front of the city of Pensacola are of solid stone or earth and the dark portions are piles and plank; but to the introduction of said evidence and all of it the defendants then and there objected, because there was no foundation laid for it, as it related solely to the land embraced in the grant aforesaid, which had been excluded from evidence; and the said judge did then and there consider and decide that said objections should be sustained and did sustain the same, and the said

chart and testimony in connection therewith was not admitted in evidence; to the said decision and refusal the defendant- then and there excepted.

And thereupon the plaintiff offered in evidence a deed from Vincente Tranquilino Pintado, Facundo Eligio Pintado, Eudaldo Gregorio Pintado, and Nicholas Augusto Pintado to Alexander C. Blount for the property in controversy, and in connection with said deed offered to prove that before the date thereof Vincente S. Pintado had died and the grantors therein were the heirs-at-law and all the heirs-at-law of the said Vincente Sebastian Pintado, the
50 grantee in the grant aforesaid, and that the land in controversy is a part of the land embraced in said grant; but to the introduction of said deed in evidence and to the reception of said testimony the defendants then and there objected, because no title had been shown in the grantors and because the evidence had no relevancy except as founded on the grant aforesaid, which had been excluded from evidence; and the said judge did then and there consider and decide that the said objections should be sustained and sustained the same, and the said deed and said testimony was not admitted in evidence; to which decision and ruling the plaintiff then and there excepted.

And the plaintiff thereupon offered to deraign title to the property in controversy from Alexander C. Blount to plaintiff by deeds of conveyance then and there established to the court; but to the introduction of said deeds in evidence the defendants then and there objected, because the title had not been shown to be in said Alexander C. Blount or the said mesne grantors, and because the title of each of them was based only on the grant aforesaid, which had been excluded from evidence; and said judge did then and there consider and decide that said objections should be sustained and did sustain the same, and said deeds were not read in evidence; to which decision and ruling the defendants then and there excepted.

And plaintiff thereupon announced that he had no further evidence to produce and offer, and the said judge then and there directed said jury to find a verdict for the defendants, and
51 the said jury then and there found a verdict for the defendants.

Whereupon the court aforesaid, on the — day of April, A. D. 1894, at the term aforesaid, rendered judgment in favor of defendants and against the plaintiff for the sum of $—— costs, as appears of record. Inasmuch as said several matters objected to or insisted upon and considered by the court do not appear by the record of the verdict and judgment aforesaid, the said plaintiff, by his counsel aforesaid, did, on the 16th day of June, A. D. 1894, after the expiration of the term of court aforesaid, by virtue of a special order herein made, propose this his bill of exceptions to said opinions and decisions of said judge and request him to sign the same according to the form of statute in such case made and provided; which is done this 16th day of June, A. D. 1894.

W. D. BARNES,
Judge of the Circuit Court of the First Judicial Circuit of Florida.

And the said plaintiff, after the expiration of the term of said court at which the judgment aforesaid was rendered, filed his order for writ of error and citation to defendants in words and figures following:

In Escambia County Circuit Court, State of Florida.

52	WILLIAM RICHARDSON, Trustee, *vs.* LOUISVILLE & NASHVILLE RAILROAD CO.; MARTIN H. SULLIVAN and EMILY S. SULLIVAN, as Executor and Executrix of D. F. Sullivan, Deceased.	Ejectment.

The clerk of said court will please issue writ of error and citation to the defendants, returnable to the 25th day of June, 1894, a day in the next term of the supreme court of the State of Florida.

W. A. BLOUNT,
Attorney for Plaintiff.

(Indorsement:) W. Richardson, trustee, *vs.* M. H. Sullivan *et al.* Order for writ of error. Filed May 19th, 1894. Jno. de la Rua, clerk circuit court.

And upon the same day plaintiff filed his bond on writ of error, which, with the approval thereof, is in the words and figures following, to wit:

Know all men by these presents that we, William Richardson, as trustee, and Thomas C. Watson and Wm. H. Knowles, are held and firmly bound unto the Louisville & Nashville Railroad Co. and Martin H. Sullivan and Emily S. Sullivan, executor and executrix of D. F. Sullivan, deceased, in the sum of one hundred dollars; for the payment whereof, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, firmly by these presents.

Signed and sealed this 14th day of May, A. D. 1894.

53 The condition of this obligation is such that whereas, at the April term of the circuit court of Escambia county, A. D. 1894, in a cause therein and then pending, wherein the said William Richardson, trustee, was plaintiff and the said obligees were defendants, judgment was rendered against the said plaintiff, from which judgment he has determined to take a writ of error to the supreme court of the State of Florida:

Now, therefore, if the said William Richardson, trustee, shall pay all costs which may accrue in the prosecution of the said writ if the judgment of the court below shall be affirmed, then this obligation to be null and void; else to be of full force and effect.

W. RICHARDSON, *Trustee,* [SEAL.]
By W. A. BLOUNT, *Attorney-in-fact.*
THOS. C. WATSON. [SEAL.]
WM. H. KNOWLES. [SEAL.]

Approved May 19th, 1894.
JNO. DE LA RUA,
[OFFICIAL SEAL.] *Clerk Circuit Court.*

(Indorsement:) W. Richardson, trustee, *vs.* Sullivan's executors and L. & N. R. R. Co. Bond on writ of error. Filed May 19th, 1894. Jno. de la Rua, clerk circuit court.

54 Whereupon, upon the same day, to wit, the 19th day of May, in the year of our Lord one thousand eight hundred and ninety-four, writ of error issued from the clerk's office aforesaid, which is in words and figures following, to wit:

Writ of Error.

STATE OF FLORIDA, *ss:*

The State of Florida to the judge of the circuit court of the first judicial circuit of the State of Florida, Greeting:

Because in the record and proceedings and also in the rendition of judgment in a certain cause which is in our circuit court, before you, between William Richardson, trustee, as plaintiff, and The Louisville & Nashville Railroad Company and Martin H. Sullivan and Emily S. Sullivan, as executor and executrix of D. F. Sullivan, deceased, as defendants, manifest error hath happened, as it is said, to the great damage of the said William Richardson, trustee, as by his complaint appears, we, willing that the error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you that, if judgment be therein rendered, you distinctly and openly send the record and proceedings aforesaid, with all things touching them, under your seal, together with this writ, to our supreme court of the State of Florida, so that you have the same at Tallahassee on the 25th day of June, A. D. 1894, in our said supreme court, to be then and there held, that, inspecting the record and proceedings aforesaid,
55 our said supreme court may cause further to be done therein to correct that error what of right and according to law should be done.

Witness the Honorable Geo. P. Raney, chief justice of the said supreme court, and the seal of the said circuit court, this 19th day of May, in the year of our Lord one thousand eight hundred and ninety-four.

JNO. DE LA RUA,
[SEAL.] *Clerk of the Circuit Court of Escambia Co.*

(Indorsement:) In the supreme court, State of Florida. William Richardson, trustee, plaintiff in error, *vs.* M. H. Sullivan *et al.*, defendants in error. Writ of error to circuit court of Escambia county. Filed and issued May 19th, 1894. Blount & Blount, att'ys for plaintiff in error.

And upon the same day, to wit, the 19th day of May, in the year of our Lord one thousand eight hundred and ninety-four, *scire facias ad audiendum errores* issued from the clerk's office aforesaid, with which the return thereon is in words and figures following, to wit:

Scire Facias ad Audiendum Errores.

THE STATE OF FLORIDA:

To the sheriff of the supreme court of said State, Greeting:

Whereas on the petition of William Richardson, trustee,
56 alleging that in the record and proceedings and also in the rendition of judgment in a certain cause in the circuit court of our first judicial circuit in and for Escambia county, between William Richardson, trustee, as plaintiff, and the L. & N. R. R. Co. and Martin H. Sullivan and Emily S. Sullivan, as executor and executrix of D. F. Sullivan, deceased, as defendants, manifest error hath happened, to the great damage of the said William Richardson, trustee, a writ of error hath been awarded that our supreme court, having inspected the record and proceedings aforesaid, may cause to be done therein that error what of right and according to law should be done:

Therefore we command you that you make known to the said L. & N. R. R. Co. and M. H. Sullivan and E. S. Sullivan, executor and executrix of D. F. Sullivan, deceased, that they be before our said supreme court, at the city of Tallahassee, on the 25th June, A. D. 1894, then and there to hear the record and proceedings aforesaid and the errors assigned, if to it it shall seem expedient, and further to do and receive what our said court shall in that behalf consider; and have you then and there this writ.

Witness the Honorable Geo. P. Raney, chief justice of the said supreme court, and the seal of the said circuit court, this 19th day of May, in the year of our Lord one thousand eight hundred and ninety-four.

JNO. DE LA RUA,
[SEAL.] *Clerk of the Circuit Court of Escambia Co.*

(*Return.*)

Executed this 1st day of June, 1894, by delivering a true
57 copy of the within writ to E. O. Saltmarsh, sup't and business agent, resident in Escambia county, Florida, of the Louisville & Nashville Railroad Company, in the absence of the president, vice-president, secretary, cashier, treasurer, general manager, and all of the directors of said company.

GEO. E. SMITH, *Sheriff*,
Per L. M. BROOKS,
Deputy Sheriff.

Service of the within writ is hereby acknowledged May 26th, 1894.
RICHARD L. CAMPBELL,
Attorney for Sullivan's Executors.
RICHARD L. CAMPBELL.

(Indorsement:) In the supreme court, State of Florida. Wm. Richardson, trustee, plaintiff in error, *vs.* L. & N. R. R. Co. and Sullivan's Executors, defendants in error. *Scire facias ad audiendum errores.* Issued May 19th, 1894. Blount & Blount, attorneys for plaintiff in error.

I, Jno. de la Rua, clerk of the circuit court of the State of Florida first judicial circuit in and for the county of Escambia, do hereby certify that the foregoing pages, numbered from one to —, inclusive, constitute a true copy of all of the proceedings and a correct transcript of the record of the judgment in the case of William Richardson, trustee, plaintiff, and The Louisville & Nashville R. R. Co. and M. H. Sullivan and Emily S. Sullivan, as executor and executrix of D. F. Sullivan, deceased, defendants, as appears upon the files and records of my office.

In testimony whereof I have hereunto set my hand and
58 affixed the seal of said court this the — day of June, in the year of our Lord one thousand eight hundred and ninety-four.

[CT. CT. SEAL.] JNO. DE LA RUA,
Clerk of the Circuit Court for the County of Escambia.

(Indorsement:) William Richardson, trustee, *vs.* M. H. Sullivan *et al.* Record. Filed in supreme court Jun- 23, 1894. J. B. Whitfield, clerk.

STATE OF FLORIDA, *ss:*

The State of Florida to the judge of the circuit court of the — judicial circuit of the State of Florida, Greeting:

Because in the record and proceedings and also in the rendition of judgment in a certain cause which is in our said circuit court, before you, between William Richardson, trustee, as plaintiff, and Louisville & Nashville R. R. Co. and Martin H. Sullivan and Emily S. Sullivan, as executor and executrix of D. F. Sullivan, deceased, as defendants, manifest error hath happened, as it is said, to the great damage of the said William Richardson, trustee, as by his complaint appears, we, willing that the error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you that, if judgment be therein rendered, you distinctly and openly send the record and proceedings aforesaid, with all things touching them, under
59 your seal, together with this writ, to our supreme court of the State of Florida, so that you have the same at Tallahassee on the 25th day of June, A. D. 1894, in our said supreme court to be then and there held, that, inspecting the record and proceedings aforesaid, our said supreme court may cause further to be done therein to correct that error what of right and according to law should be done.

Witness the Honorable Geo. P. Raney, chief justice of the said supreme court, and the seal of the said circuit court, this 19th day

of May, in the year of our Lord one thousand eight hundred and ninety-four.

[CT. CT. SEAL.] JNO. DE LA RUA,
Clerk of the Circuit Court of Circuit *County.*

(Indorsement:) In supreme court, State of Florida. William Richardson, trustee, plaintiff in error, *vs.* M. H. Sullivan *et al.*, executor, etc.. defendant- in error. Writ of error to circuit court of Escambia county. Filed and issued May 19th, 1894. Blount & Blount, attorneys for plaintiff in error. Filed in supreme court June 23, 1894. J. B. Whitfield, clerk.

The State of Florida to the sheriff of the supreme court of said State, Greeting:

Whereas, on the petition of William Richardson, trustee, alleging that in the record and proceedings and also in the rendition of judgment in a certain cause in the circuit court of our first
60 judicial circuit in and for Escambia county, between William Richardson, trustee, as plaintiff, and L. & N. R. R. Co. and Martin H. Sullivan and Emily S. Sullivan, as executor and executrix of D. F. Sullivan, deceased, as defendants, manifest error hath happened, to the great damage of the said William Richardson, trustee, a writ of error hath been awarded that our supreme court, having inspected the record and proceedings aforesaid, may cause to be done therein to correct that error what of right and according to law should be done:

Therefore we command you that you make known to the said L. & N. R. R. Co. and M. H. Sullivan and E. S. Sullivan, as executor and executrix of D. F. Sullivan, deceased, that they be before our said supreme court. at the city of Tallahassee, on the 25th June, A. D. 1894, then and there to hear the record and proceedings aforesaid and the errors assigned, if to it it shall seem expedient, and further to do and receive what our said court shall in that behalf consider; and have you then and there this writ.

Witness the Honorable Geo. P. Raney, chief justice of the said supreme court, and the seal of the said circuit court this 19th day of May, in the year of our Lord one thousand eight hundred and ninety-four.

[SEAL.] JNO. DE LA RUA,
Clerk of the Circuit Court of Escambia County.

(Indorsement:) In the supreme court, State of Florida. William Richardson, trustee, plaintiff in error, *vs.* L. & N. R. R. Co. and Sullivan's Executors, defendant- in error. *Scire facias ad audi-*
61 *endum errores.* Issued May 19th, 1894. Service of the within writ is hereby acknowledged May 26th, 1894. Richard L. Campbell, attorney for Sullivan's executors. Richard L. Campbell. Blount & Blount, att'ys for plaintiff in error.

Executed this first day of June, 1894, by delivering a true copy of the within writ to E. O. Saltmarsh, superintendent and business

agent, resident in Escambia county, Florida, of the Louisville & Nashville Railroad Company, in the absence of the president, vice-president, secretary, cashier, treasurer, general manager, and all of the directors of said company.

GEO. E. SMITH, *Sheriff*,
Pr. L. M. BROOKS,
Deputy Sheriff.

Filed in supreme court June 23rd, 1894.
J. B. WHITFIELD, *Clerk.*

And afterwards, to wit, on the 23rd day of June, A. D. 1894, came the plaintiff in error and filed herewith his assignment of errors to the judgment of the said circuit court of the State of Florida; which said assignment of errors is in the words and figures as follows, to wit:

In the Supreme Court of Florida.

WILLIAM RICHARDSON, Trustee, Plaintiff in Error,
vs.
LOUISVILLE & NASHVILLE RAILROAD COMPANY and M. H. SULLIVAN and Emily S. Sullivan, as Executor and Executrix of
62 D. F. Sullivan, Deceased, Defendants in Error.

The plaintiff in error assigns as error in the ruling of the court below:

1.

The refusal of the court to admit in evidence the grant from Alexander Ramirez to Vincente S. Pintado.

W. A. BLOUNT,
Attorney for Plaintiff in Error.

And at a subsequent day, to wit, on the 15th day of September, 1896, during a regular term of the supreme court of the State of Florida, judgment was rendered by the said supreme court of the State of Florida in the words and figures as follows, to wit:

WILLIAM RICHARDSON, Trustee, Plaintiff in Error,
vs.
THE LOUISVILLE & NASHVILLE RAILROAD Company and M. H. Sullivan and Emily S. Sullivan, Executor and Executrix of the Estate of D. S. Sullivan, Deceased, Defendants in Error.

Upon Writ of Error to a Judgment of the Circuit Court within and for the County of Escambia.

63 Upon motion and consent of counsel it is ordered that this cause be advanced for hearing and determination, and the cause having been submitted to the court upon a transcript of the record of the judgment entered herein and the argument of counsel

for the plaintiff in error, counsel for the defendant in error having filed no briefs, and the record having been seen and inspected, and the court being now advised of its judgment to be given in the premises, it seems to the court that there is no error in the said judgment. It is therefore considered, ordered, and adjudged by the court that the said judgment of the circuit court be, and is hereby, affirmed; and it is further ordered that the plaintiff in error do pay the costs of this proceeding, taxed at the sum of $—; all of which is ordered to be certified to the court below.

The opinion of the court in this cause was this day read by Mr. Chief Justice Mabry and ordered to be filed.

The opinion of the court in this cause is in the words and figures following:

WILLIAM RICHARDSON, Trustee, Plaintiff in Error,
vs.
SULLIVAN'S EXECUTORS and THE LOUISVILLE & Nashville Railroad Company, Defendants in Error.
} Escambia County.

64 Writ of error from the circuit court for Escambia county in an action of ejectment.

MABRY, *C. J.*:

Plaintiff in error was complainant in the circuit court and judgment was rendered against him at a term of that court held in April, 1894. At a former term of the court plaintiff in error obtained a judgment for the land sued for, but this judgment was reversed on appeal to this court (Sullivan *v.* Richardson, 33 Fla., 1; 14 South. Rep., 692).

On the former trial plaintiff in error offered in evidence as a basis of title to the locus demanded an alleged Spanish grant from Don Alexander Ramirez, intendant of the army and superintendent general, &c., to Don Vincente Sebastian Pintado, and familiarly known in Pensacola, Florida, as the Pintado grant. It is not deemed necessary to set out the grant here, as it appears in translation in the statement accompanying the former opinion in this case, where it may be found. Certain objections to the introduction of the alleged grant, not extending to the legal effect of its terms or to the power of the officer who executed it to make a grant of the property involved in the action, were made and overruled. The court's action in overruling the objections stated was sustained in the former opinion, and the construction and validity of the alleged grant came before the court for consideration. In construing the grant it was held that its purpose as to the water front therein described was not to grant the land and water as such within the described limits, but the right to use the same within such limits and to the depth stated below the surface of the soil for the
65 purpose of constructing wharves and houses for bathing,

such right of use being to the exclusion of any similar right of use in any other individuals and subordinate to the right of the King and the public to construct wharves with municipal or common funds within such limits; also, that while the King of Spain could have made such a grant to Pintado, it would have been contrary to his laws then in force in West Florida and a case of special exception from their effect, and that Ramirez had no authority to make the grant, and it was void and vested no title in the grantee.

On the last trial, the proceedings of which are now before us, the plaintiff in error offered the same alleged grant in evidence in connection with proof of its execution, and also a deraignment of paper title to the property in question from Pintado's heirs to himself, and the offer was rejected by the court. It is not questioned that the locus in question is within the designated limits of the alleged grant. The ruling of the court, in view of the former decision here, was evidently based upon the theory that the meaning of the alleged grant, so far as the extension or space of the bay of Pensacola therein described is concerned, was not to convey the land and water as such, but the right to use the same within the said limits and to the depth stated below the surface of the soil for the purpose of constructing wharves and houses for bathing, such right of use being to the exclusion of any similar right in any other individuals and subordinate to the right of the King and the public to construct wharves with municipal or common funds within said limits, and that it was not within the authority of Ramirez to make the grant as thus construed, and it was void as to the space therein described as the extension of the bay of Pensacola. The theory, both as to the
66 construction of the grant and the authority of Ramirez to make it, is fully sustained by the former decision made in the case (Sullivan *v.* Richardson, *supra*), and the authorities and reasoning upon which the conclusion was then reached are fully stated therein.

We do not deem it necessary to review the authorities again, but, upon the decision made, affirm the ruling of the circuit judge in excluding the alleged grant as evidence to be considered by the jury on the grounds above stated. Order to be made affirming the judgment.

And afterwards, to wit, on the 22nd day of September, 1896, the following order was entered by the supreme court of the State of Florida, to wit:

WILLIAM RICHARDSON, Trustee, Plaintiff in Error,
vs.
LOUISVILLE & NASHVILLE RAILROAD COMPANY and M. H. Sullivan and Emily S. Sullivan, Executor and Executrix of the Estate of D. F. Sullivan, Deceased, Defendants in Error.

In this cause, the judgment of the circuit court in and for Escambia county, Florida, having been affirmed, it is now cer-
67 tified that this is the highest court of law in the State of

Florida in which a decision in this suit can be had; that the plaintiff in error herein claimed that the grant of land and water relied upon by him, as shown by the record, was included in the grants which remained confirmed under the terms of the treaty between the United States and Spain, dated February 22nd, 1819, and that an inquiry by this court into the authority of the officer making such grant, he having general authority to make grants, was prevented by the operation of said treaty; that the decision of this court was adverse to such contention and determined that such inquiry could be made, and that said officer had no power to make said grant, and that said grant was void; and that there was thereby drawn in question and decided adversely to the plaintiff in error a title, right, or privilege claimed under a treaty of the United States.

And this certificate is made a part of the record.

And afterwards, to wit, on the 23rd day of September, 1896, the following petition was filed and order granted by the supreme court of the State of Florida, to wit:

Honorable M. H. Mabry, chief justice of the supreme court of the State of Florida:

Your petitioner, William Richardson, trustee, humbly represents that in the decision of a cause wherein he was plaintiff in error and The Louisville and Nashville Railroad Company and M. H. Sullivan and Emily S. Sullivan, as executor and executrix of the
68 estate of D. F. Sullivan, deceased, were defendants, lately pending and decided in the supreme court of Florida, there was error in that the court decided that it had authority, in spite of the provisions of the treaty of the United States with Spain, dated February 22nd, 1819, to enquire into the power of Alexandro Ramirez, intendant of Spain, the officer making the grant upon which the plaintiff in error relied, to grant the property in controversy in said cause, and in that the court decided that the said officer had no power to make such grant, and that said grant was void.

And your petitioners are further advised that the said decision presents a Federal question reviewable by the Supreme Court of the United States. Therefore he prays that he may be allowed a writ of error to the said Supreme Court of the United States, in order that the said judgment and decision may be reviewed and justice done in the premises.

W. A. BLOUNT,
Attorney for William Richardson, Trustee, Petitioner.

The writ of error prayed for is hereby allowed.
September 23rd, 1896.

MILTON H. MABRY,
Chief Justice of the Supreme Court of the State of Florida.

And afterwards, to wit, on the 23rd day of September, 1896,
69 plaintiff in error filed his bond on writ of error in the words and figures following, to wit:

WILLIAM RICHARDSON, Trustee, Plaintiff in Error,
vs.
THE LOUISVILLE & NASHVILLE RAILROAD COMPANY and M. H. Sullivan and Emily S. Sullivan, Executor and Executrix of the Estate of D. F. Sullivan, Deceased, Defendants in Error.

Know all men by these presents that we, William Richardson, trustee, and W. H. Knowles, are held and firmly bound unto the above-named Louisville & Nashville Railroad Company and M. H. Sullivan and Emily S. Sullivan, as executor and executrix of the estate of D. F. Sullivan, deceased, in the sum of two hundred and fifty dollars ($250.00); for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Signed and sealed this 21st day of September, 1896.

The condition of the foregoing obligation is such that whereas the above-named William Richardson, trustee, is prosecuting an appeal to the Supreme Court of the United States to reverse the decree rendered in the above-entitled suit by the supreme court of the State of Florida:

70 Now, therefore, if the above-named William Richardson, trustee, prosecute said appeal to effect and answer all damages and costs if he fail to make said appeal good, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

WM. RICHARDSON. [SEAL.]
WM. H. KNOWLES. [SEAL.]

STATE OF FLORIDA,
County of Escambia.

Before the subscriber, a notary public in and for said county and State, personally appeared W. H. Knowles, who, being duly sworn, says that he is worth the sum of two hundred and fifty dollars ($250.00) over and above all his just debts, liabilities, and exemptions, in property subject to execution.

WM. H. KNOWLES.

Sworn to and subscribed before me this 21st day of September, A. D. 1896.

J. WHITING HYER,
Notary Public.

This bond is approved by me this 23rd day of September, A. D. 1896.

MILTON H. MABRY,
Chief Justice of the Supreme Court of the State of Florida.

And afterwards, to wit, on the 23rd day of September, 1896, plaintiff in error filed the following:

71 *Assignment of Errors.*

WILLIAM RICHARDSON, Trustee, Plaintiff in Error,
vs.
THE LOUISVILLE & NASHVILLE RAILROAD COMPANY and M. H. Sullivan and Emily S. Sullivan, Executor and Executrix of the Estate of D. F. Sullivan, Deceased, Defendants Whereof.

And now comes the said plaintiff in error, by his attorney, and says that in the record and proceedings in the above-entitled cause there is manifest error, in this:

1. That the court erred in deciding that inquiry could be made by it into the power of Alexandro Ramirez, intendant of Spain, to make the grant of land and water contained in certificate C of the grant made by him December 17th, 1817, contained in the record.

2. That the court erred in deciding that the said officer had no power to make said grant.

3. That the court erred in deciding that the said grant was void.

4. That the court erred in deciding that the said grant did not purport to be a grant of a fee-simple title to V. S. Pintado, the remote grantor of plaintiff in error.

5. That the court erred in affirming the judgment of the
72 lower court and thus deciding finally against the title set up by plaintiff in error.

Wherefore the said William Richardson, trustee, plaintiff in error, prays that the order and judgment of the said supreme court of the State of Florida be reversed, and that judgment herein be entered by this court in accordance with law.

W. A. BLOUNT,
Attorney for Plaintiff in Error.

And afterwards, to wit, on the 23rd day of September, 1896, a writ of error was filed in the supreme court of Florida in the following words and figures, to wit:

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable judges of the supreme court of the State of Florida, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court of the State of Florida, before you or some of you, being the highest court of law or equity of the said State in which a decision can be had in the said suit between William Richardson, trustee, plaintiff in error, and The Louisville & Nashville Railroad Company and M. H. Sullivan and Emily S. Sullivan, executor and executrix of the estate of D. F. Sullivan, deceased, wherein was drawn in question the construction of a clause of a treaty of the United States and the
73 decision was against the title, right, or privilege, specially

set up or claimed under such clause of the said treaty, a manifest error hath happened, to the great damage of the said William Richardson, trustee, as by his complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, and all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you will have the same in Washington on the 21 day of October next, in the said Supreme Court, to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of said Supreme Court, the 23rd day of September, in the year of our Lord one thousand eight hundred and ninety-six.

F. W. MARSH,

[U. S. CT. CT. SEAL.] *Clerk of the Circuit Court of the United States for the Northern District of Fla.*,

By JOHN McDOUGALL,

Deputy Clerk.

74 UNITED STATES OF AMERICA, *State of Florida*, } *ss:*

I, J. B. Whitfield, clerk of the supreme court of the State of Florida, by virtue of the foregoing writ of error and in obedience thereto, do hereby certify that the foregoing pages, numbered from one to seventy-three, inclusive, contain a true and complete transcript of the record of proceedings had in said court in the case of William Richardson, trustee, plaintiff in error, against The Louisville R. R. Co. and against M. H. Sullivan and Emily S. Sullivan, as executor and executrix of D. F. Sullivan, deceased, defendants in error, as the same remains on file and of record in said court.

In testimony whereof I have caused the seal of said court to be hereunto affixed, at the city of Tallahassee, in the year of our Lord 1896, and in the Independence of the United States the one hundred and twentieth.

[Seal of Supreme Court of the State of Florida.]

JAMES B. WHITFIELD,

Clerk of the Supreme Court of the State of Florida.

75 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable judges of the supreme court of the State of Florida, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court of the State of Florida, before you or some of you, being the highest court of law or equity of the said State in which a decision can be had in the said suit between William Richardson, trustee, plaintiff in error,

and The Louisville & Nashville Railroad Company and M. H. Sullivan and Emily S. Sullivan, executor and executrix of the estate of D. F. Sullivan, deceased, wherein was drawn in question the construction of a clause of a treaty of the United States and the decision was against the right, title, or privilege specially set up or claimed under such clause of the said treaty, a manifest error has happened, to the great damage of the said William Richardson, trustee, as by his complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid and all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you will have the same in Washington on the 21 day of October next, in the said supreme court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court, the 23 day of September, in the year of our Lord one thousand eight hundred and ninety-six.

[Seal of U. S. Circuit Court, Northern Dist. of Florida.]

F. W. MARSH,
Clerk of the Circuit Court of the United States for the Northern District of Florida,
By JOHN McDOUGALL,
Deputy Clerk.

[Endorsed:] Filed in supreme court, State of Florida, Sep. 23, 1896. J. B. Whitfield, clerk.

76 UNITED STATES OF AMERICA, *ss:*

To the Louisville & Nashville Railroad Company and M. H. Sullivan and Emily S. Sullivan, executor and executrix of the estate of D. F. Sullivan, deceased, Greeting:

You are hereby cited and admonished to be and appear in the Supreme Court of the United States, at Washington, within thirty days of the date hereof, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Florida, wherein William Richardson, trustee, is plaintiff in error and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done the parties in that behalf.

Witness the Honorable Milton H. Mabry, chief justice of the supreme court of the State of Florida, this 23 day of September, in the year of our Lord one thousand eight hundred and ninety-six.

MILTON H. MABRY,
Chief Justice of the Supreme Court of the State of Florida.

[Endorsed:] Received the within citation at Pensacola, Fla., on the 24th day of September, A. D. 1896, and executed same by delivering a copy to E. O. Saltmarsh, superintendant of the Louisville and Nashville R. R. Co., and to M. H. Sullivan, one of the executors of the estate of D. F. Sullivan, deceased, at Pensacola, Fla., on the 24th day of September, A. D. 1896. Samuel Puleston, U. S. marshal, per Henry Bellinger, deputy marshal.

Endorsed on cover: Case No. 16,417. Florida supreme court. Term No., 251. William Richardson, trustee, plaintiff in error, *vs.* The Louisville & Nashville Railroad Company and M. H. Sullivan & Emily S. Sullivan, executor and executrix of D. F. Sullivan, deceased. Filed October 21st, 1896.

No. 251.

Motion Papers for D. E.

Filed Nov. 22, 1897.

IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1897.

No. 251.

William Richardson, Trustee,

Plaintiff in Error,

vs.

The Louisville and Nashville Railroad Company and others,

Appellees.

MOTION TO DISMISS FOR WANT OF JURISDICTION.

GREGORY L. SMITH,
Of Counsel for Appellee, The Louisville & Nashville Railroad Company

The Cantwell-Warren Printing Company, 53 Dearborn St., Chicago.

IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1897.

No. 251.

William Richardson, Trustee,
Plaintiff in Error,

vs.

The Louisville and Nashville Railroad Company and others,
Appellees.

MOTION TO DISMISS FOR WANT OF JURISDICTION.

Comes the appellee, the Louisville and Nashville Railroad Company, by its counsel of record, Gregory L. Smith, and moves the court to dismiss the above entitled cause for want of jurisdiction in the Supreme Court of the United States to review the same, in that:

It does not appear from the record that the questions relied upon by the plaintiff in error, to give jurisdiction to this court, were presented to the state courts for consideration at the proper time and in the proper manner.

The Supreme Court of Florida based its decision upon

two sufficient grounds, at least one of which does not involve, and is not claimed to involve, a Federal question.

No Federal question sufficient to give jurisdiction to this court to review the decision of the state court is involved in the cause or was decided by the Supreme Court of Florida.

STATEMENT OF THE CASE.

The material portions of the record upon which this motion is based show that this is a suit in ejectment, brought by the plaintiff in error in the Escambia County Circuit Court of the State of Florida, to recover of appellees "a tract or parcel of land "situate, lying and being in said county, known and "described as follows, to-wit: Lots Nos. one, two, "three, four, five, six, seven, eight, in square seven, and "square forty-seven (47), containing four lots, and lots "nine and ten in square number ten, in the water front "of Pensacola, according to the plan of said water front, "by James Harding, the said lots and parcels of said land "being on the projection of Tarragona street into the "bay of Pensacola." (Pr. Rec., 1, 2.) The defendants pleaded not guilty and the case was tried upon this issue.

Upon the trial of the case plaintiff offered in evidence what purported to be a Spanish grant made December 17, 1817, by Alexander Ramerez, intendent of the army, superintendent-general of Cuba and the two Floridas, to Vincento Sebastian Pintado of six tracts; a map of each tract is attached, designated respectively as plats A, B, C, D, E and F. The property in controversy is included

in the tract designated as plat C, which tract is described in the translation of the alleged grant as follows: "The "lands designated by the letter C are an extension or "tract of the bay of Pensacola, whose superficies of "water is equal to an area of 718½ arpents, superficial, "occupying between the eastern point of the mouth of "the creek of Casa Blanca, commonly called Bayou Chico, "and the western point of the mouth of the rivulet or "creek of Texar, commonly called Bayou Texar, and a "line drawn in the direction of south-east of the needle, "ninety-five perches of Paris, within the sea, from "the aforesaid first point, and the other line "of 100 of said perches in length, counted "from the second point mentioned within the sea, also "from the same point of south-east of the needle, which "embraces the whole of the front from the one to the "other mouth of the creeks of Casa Blanca and Texar, "between which is the Town of Pensacola, the whole "conforming and according to the plan annexed, made "for the greater clearness and understanding in which is "represented the figure which the said land forms in the "water and the limits within the bay of Pensacola, being "that part of the land and beach which is found between "the said two points of the mouths of the mentioned "creeks, the curve which the shore of the water of the "sea at its highest tide in calm weather makes, and with "the depth from the surface of the water as far as ten "feet English below the actual bottom, or towards the "center of the earth, in the whole, the space which the "figure represented in the said plan C embraces, consid- "ering it as a solid, since it has the three dimensions of "longitude, latitude and depth. * * * The whole in "full properly and for the purpose of constructing

"wharves and houses for bathing, reserving and saving "not only the right of his majesty, but also that of the "public, at all times whenever it becomes convenient, and "it be designed to construct wharves with whatsoever "funds, municipal or common, intending the exclusion "only with respect to particular individuals." (Pr. Rec., 18, 19.) In connection with the grant plaintiff offered to prove its execution.

The defendant objected to the grant upon the following grounds, viz:

"The grant so far as it relates to the *locus in quo* was "a mere license to Pintado to use the property in a par- "ticular way and vested in him no sufficient title upon "which to recover in ejectment.

"Because said grant, so far as it relates to the *locus in* "*quo*, was not an exclusive grant of the property occu- "pied by the defendant.

"Because said grant, so far as it relates to the *locus in* "*quo*, was not within the delegated authority of the offi- "cer who attempted to grant the same.

"Because said grant, so far as it relates to the *locus in* "*quo*, is not one which was validated or recognized by "the treaty between the United States and Spain.

"Because it is not shown that Alexander Ramerez had "the power or authority to make said grant, so far as it "related to the *locus in quo*." (Pr. Rec., 6.)

The court sustained defendants' objections without stating any particular reason therefor, and plaintiff excepted generally without specifically claiming any right whatever under any treaty.

This ruling of the court was fatal to plaintiff's recovery, and there was a verdict for defendants; from the judgment in this cause an appeal was taken to the Su-

preme Court of Florida. In the Supreme Court of Florida the plaintiff in error assigned the following error and no other, viz: "The refusal of the court to admit "in evidence the grant from Alexander Ramerez to Vin- "cento S. Pintado." (Pr. Rec., 27.)

The Supreme Court of Florida affirmed the ruling of the court below, and held that the purpose of the grant as to the water front therein described was not to grant the land and water as such within the described limits, but the right to use the same within the described limits and to the depth stated below the surface of the soil for the purpose of constructing wharves and houses for bathing, such right of use being to the exclusion of any similar right of use in any other individuals and subordinate to the right of the king and the public to construct wharves with municipal or common funds within such limits. Also, that while the king of Spain could have made such grant to Pintado, it would have been contrary to his laws then in force in West Florida and a case of special exception from their effect, and that Ramerez had no authority to make the grant, and that it was void and vested no authority in the grantee. (Pr. Rec., 28, 29.)

The Supreme Court of Florida then entered the following certificate: "In this cause, the judgment of the "Circuit Court in and for Escambia County, Florida, "having been affirmed, it is now certified that this is the "highest court of law in the State of Florida in which "a decision in this suit can be had; that the plaint- "iff in error herein claimed that the grant of land "and water relied upon by him, as shown by "the record, was included in the grants which "remained confirmed under the terms of the treaty "between the United States and Spain, dated Febru-

" ary 22nd, 1819, and that an inquiry by this court " into the authority of the officer making such grant, he " having general authority to make grants, was pre- " vented by the operation of said treaty; that the de- " cision of this court was adverse to such contention and " determined that such inquiry could be made, and that " said officer had no power to make said grant, and that " said grant was void; and that there was thereby drawn " in question and decided adversely to the plaintiff in " error a title, right or privilege claimed under a treaty " of the United States." (Pr. Rec., 29, 30.)

Gregory L. Smith

Of counsel for appellee, the Louisville and Nashville Railroad Company.

IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1897.

No. 251.

William Richardson, Trustee,

Plaintiff in Error,

vs.

The Louisville and Nashville Railroad Company and others,

Appellees.

To Mr. W. A. Blount, counsel for William Richardson, plaintiff in error:

Take notice, that on the 13th day of December 1897, a motion will be made in the Supreme Court of the United States to dismiss the above entitled cause for want of jurisdiction in said court to review the same. A copy of the motion that will be so made, together with a copy of the printed brief on behalf of the Louisville and Nashville Railroad Company, one of the appellees, in support of said motion, is hereto attached.

Gaston L Smith

Counsel for the Louisville and Nashville Railroad Company, one of the Appellees.

Copy

STATE OF Illinois
COUNTY OF Cook

Personally appeared before me, D. A Peirce, a notary public in and for said state and county, Gregory L. Smith, and being by me duly sworn deposes and says, that he is of counsel of record for the Louisville and Nashville Railroad Company in the above entitled cause, and that on the 4th day of June, 1897, he deposited in the United States mails, with postage prepaid, a printed copy of the foregoing notice, with a copy of the motion and brief therein referred to, addressed to W. A. Blount, Pensacola, Florida; that said Blount is counsel of record for the plaintiff in error in said cause, and that said address was and is the proper postoffice address of the said W. A. Blount.

Gregory L Smith

Subscribed and sworn to before me this, the 19th day of November 189 , as witness my hand and the seal of my office.

(signed) D A Peirce
Notary Public

[illegible]al

Brief of Smith for Appellee Co

Filed Nov 23, 1897.

Supreme Court of the United States.

OCTOBER TERM, A. D. 1897.

No. 251.

William Richardson, Trustee,
Plaintiff in Error,
vs.

The Louisville and Nashville Railroad Company and others,
Appellees.

BRIEF BY GREGORY L. SMITH,

of Counsel for Appellee, the Louisville and Nashville Railroad Company, upon Motion to Dismiss for want of jurisdiction.

Rogers Printing Company, 22 Jackson St., Chicago.

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1897.

No. 251.

William Richardson, Trustee,

Plaintiff in Error,

vs.

The Louisville and Nashville Railroad Company and others,

Appellees.

STATEMENT OF THE CASE.

This is a suit in ejectment, brought by the plaintiff in error in the Escambia County Circuit Court of the State of Florida, to recover of appellees "a tract or parcel of "land situate, lying and being in said county, known and "described as follows, to-wit: Lots Nos. one, two, "three, four, five, six, seven, eight, in square seven, and "square forty-seven (47), containing four lots, and lots "nine and ten in square number ten, in the water front "of Pensacola, according to the plan of said water front, "by James Harding, the said lots and parcels of land "being on the projection of Tarragona street into the

"bay of Pensacola." (Pr. Rec., 1, 2.) The defendants pleaded not guilty and the case was tried upon this issue.

Upon the trial of the case plaintiff offered in evidence what purported to be a Spanish grant made December 17, 1817, by Alexander Ramerez, intendent of the army, superintendent-general of Cuba and the two Floridas, to Vincente Sebastian Pintado of six tracts; a map of each tract is attached, designated respectively as plats A, B, C, D, E and F. The property in controversy is included in the tract designated as plat C, which tract is described in the translation of the alleged grant as follows: "The "lands designated by the letter C are an extension or "tract of the bay of Pensacola, whose superficies of "water is equal to an area of 718½ arpents, superficial, "occupying between the eastern point of the mouth of "the creek of Casa Blanca, commonly called Bayou Chico, "and the western point of the mouth of the rivulet or "creek of Texar, commonly called Bayou Texar, and a "line drawn in the direction of southeast of the needle, "ninety-five perches of Paris, within the sea, from "the aforesaid first point, and the other line "of 100 of said perches in length, counted "from the second point mentioned within the sea, also "from the same point of south-east of the needle, which "embraces the whole of the front from the one to the "other mouth of the creeks of Casa Blanca and Texar, "between which is the Town of Pensacola, the whole "conforming and according to the plan annexed, made "for the greater clearness and understanding in which is "represented the figure which the said land forms in the "water and the limits within the bay of Pensacola, being "that part of the land and beach which is found between "the said two points of the mouths of the mentioned

"creeks, the curve which the shore of the water of the "sea at the highest tide in calm weather makes, and with "the depth from the surface of the water as far as ten "feet English below the actual bottom, or towards the "center of the earth, in the whole, the space which the "figure represented in the said plan C embraces, consid- "ering it as a solid, since it has these three dimensions of "longitude, latitude and depth. * * * The whole in "full properly and for the purpose of constructing "wharves and houses for bathing, reserving and saving "not only the right of his majesty, but also that of the "public, at all times whenever it becomes convenient, and "it be designed to construct wharves with whatsoever "funds, municipal or common, intending the exclusion "only with respect to particular individuals." (Pr. Rec., 18, 19.) In connection with the grant plaintiff offered to prove its execution.

The defendant objected to the grant upon the following grounds, viz:

"The grant so far as it relates to the *locus in quo* was "a mere license to Pintado to use the property in a par- "ticular way and vested in him no sufficient title upon "which to recover in ejectment.

"Because said grant, so far as it relates to the *locus in* "*quo*, was not an exclusive grant of the property occu- "pied by the defendant.

"Because said grant, so far as it relates to the *locus in* "*quo*, was not within the delegated authority of the offi- "cer who attempted to grant the same.

"Because said grant, so far as it relates to the *locus in* "*quo*, is not one which was validated or recognized by "the treaty between the United States and Spain.

"Because it is not shown that Alexander Ramerez had

"the power or authority to make said grant, so far as it "related to the *locus in quo.*" (Pr. Rec., 6.)

The court sustained defendants' objections without stating any particular reason therefor, and plaintiff excepted generally without specifically claiming any right whatever under any treaty.

This ruling of the court was fatal to plaintiff's recovery, and there was a verdict for defendants; from the judgment in this cause an appeal was taken to the Supreme Court of Florida. In the Supreme Court of Florida the plaintiff in error assigned the following error and no other, viz: "The refusal of the court to admit "in evidence the grant from Alexander Ramerez to Vin-"cento S. Pintado." (Pr. Rec., 27.)

The Supreme Court of Florida affirmed the ruling of the court below, and held that the purpose of the grant as to the water front therein described was not to grant the land and water as such within the described limits, but the right to use the same within the described limits and to the depth stated below the surface of the soil for the purpose of constructing warves and houses for bathing, such right of use being to the exclusion of any similar right of use in any other individuals and subordinate to the right of the king and the public to construct wharves with municipal or common funds within such limits. Also, that while the king of Spain could have made such grant to Pintado, it would have been contrary to his laws then in force in West Florida and a case of special exception from their effect, and that Ramerez had no authority to make the grant, and that it was void and vested no authority in the grantee. (Pr. Rec., 28, 29.)

The Supreme Court of Florida then entered the fol-

lowing certificate: "In this cause, the judgment of the "Circuit Court in and for Escambia County, Florida, "having been affirmed, it is now certified that this is the "highest court of law in the State of Florida in which "a decision in this suit can be had; that the plaint-"iff in error herein claimed that the grant of land "and water relied upon by him, as shown by "the record, was included in the grants which "remained confirmed under the terms of the treaty "between the United States and Spain, dated Febru-"ary 22nd, 1819, and that an inquiry by this court "into the authority of the officer making such grant, he "having general authority to make grants, was pre-"vented by the operation of said treaty; that the de-"cision of this court was adverse to such contention and "determined that such inquiry could be made, and that "said officer had no power to make said grant, and that "said grant was void; and that there was thereby drawn "in question and decided adversely to the plaintiff in "error a title, right or privilege claimed under a treaty "of the United States." (Pr. Rec., 29, 30.)

The Contentions of the Parties.

Plaintiff in error claims that by the treaty between Spain and the United States of February 22, 1819, his claim to hold under a Spanish grant is protected from inquiry by a state court into the authority of the officer to make the grant. That such a contention is a claim of a right, title or privilege under a treaty, within the meaning of the twenty-fifth section of the judiciary act, and that this claim was duly presented to the state court and by it adjudicated adversely to him.

The defendant in error claims, on the other hand, that the record does not show that any such claim was ever affirmatively made in the state court, nor that it was specifically considered and adjudicated by the state court adversely to the plaintiff in error; that such a contention does not constitute a claim of a right, title or privilege under the treaty within the meaning of the twenty-fifth section of the judiciary act, and that the authority of Ramerez to make the grant in question was a proper question for the determination of the state court, and that its decision does not, therefore, raise a Federal question. Appellee further claims that the Supreme Court of the state determined two questions, viz: 1. That the grant was not of the title to the land and water, but of a mere easement in them, and, 2, that Ramerez had no power to make the grant and that the grant was therefore void, and they insist that if the grant was of a mere easement it was not sufficient, though valid, to sustain an action in ejectment, and that the Supreme Court of the United States therefore has no jurisdiction to review the case even if the other question adjudicated did, in itself, involve a Federal question.

ARGUMENT.

I.

THE ALLEGED FEDERAL QUESTION IS NOT SHOWN BY THE RECORD TO HAVE BEEN PROPERLY PRESENTED, IF AT ALL, TO THE STATE COURT.

Except in the certificate of the Supreme Court of Florida, made after the cause was affirmed, there is absolutely nothing in the record, including the opinion of the Supreme Court of Florida, intimating in the remotest manner that the plaintiff in error claimed any right, title or privilege of any kind under a treaty, or that he claimed that the state court had no right to inquire into the authority of Ramerez to make the grant. No such claim is shown to have been made or intimated when the alleged grant was offered in evidence, and there was nothing in the ruling of the Circuit Court tending to show the consideration by it of such a claim; no claim was evenly remotely hinted by the plaintiff in error in his assignment of error in the Supreme Court of Florida, nor does the court, in its opinion, discuss or even refer to that question. It assumes that it had the right to make the inquiry and treats its right to do so as conceeded, and then proceeds to determine the authority of Ramerez to make the grant. The record, other than the certificate of the court, far from showing that such a claim was specially brought to its attention, affirmatively shows that the question was not brought to its attention unless this was done by counsel in argument; it does not show whether any argument of any character was made

before it by counsel for plaintiff in error or not; nor what that argument, if any, was, but by implication the opinion of the court tends to negative the idea that any such claim as that certified was argued before it; the opinion deals with other matters, and contains no reference to, or discussion of, the question now claimed to have been presented to it. The treaty between America and Spain is not even referred to in the opinion. The absence of all mention of this treaty by the court is most suggestive when it is remembered that when the alleged grant was offered in evidence defendant in error objected to it upon three grounds, viz.: That the alleged grant was only a license to Pintado to use the property for particular purposes and did not vest a title in him upon which he could maintain an action in ejectment; that Ramerez had no authority to make the grant; and because the grant, so far as it relates to the *locus in quo*, is not one which was validated or recognized by the treaty between the United States and Spain. (Pr. Rec., 6.) The court, with three distinct propositions before it, discussed and decided two of them, and entirely ignored the third. If the contention now made by the plaintiff in error had been pressed upon the Supreme Court of Florida, it could not have reached the question of Ramerez' authority without first disposing of it, and yet it passes to the consideration of Ramerez' authority without as much as a passing reference to the treaty. I respectfully submit, therefore, that the opinion strongly tends to negative the idea that the present contention of the plaintiff in error was ever presented to the state court until after the decision of the court had been rendered, and a contention then presented for the first time comes too late and cannot be considered by this court.

Sayward v. *Denny*, 158 U. S., 180.

But, be that as it may, it is certain that the record, other than the certificate of the court, does not show that the question was presented to the state court.

The office of the certificate of the state court is only to make certain and specific what is too general and indefinite in the record.

Roby v. *Colehour*, 146 U. S., 153.
Dibble v. *Bellinger Building and Loan Co.*, 163 U. S., 63.

The certificate will be treated with respect, but cannot confer jurisdiction upon the Supreme Court of the United States to review the case.

Sayward v. *Denny*, 158 U. S., 180.
Jersey City & Bergen R. R. Co. v. *Morgan*, 160 U. S., 288.
Winona & St. Peter Land Co. v. *Minnesota*, 159 U. S., 540.

The case of *Sayward* v. *Denny* (*supra*) seems conclusive against the jurisdiction of the court, because the alleged Federal question is not shown by the record, other than in the certificate of the state court, to have been properly presented. Sayward, through his agent, Meigs, contracted with Haller for the purchase of some logs, and one Crawford and others became his sureties upon the contract; Haller sued both the principal and sureties upon the contract, but service was not obtained upon Sayward. Crawford and the other sureties appeared and defended the action and judgment was rendered against them; Crawford died and Denny and another became his executors and were compelled, under execution, to pay part of the judgment; they then sued Sayward to recover the money so paid. The declaration set out the facts upon which the

action was based and Sayward demurred to it; the demurrer being overruled, he pleaded that he was never served with process in the suit in which the judgment was rendered. Upon the trial he objected to the introduction of the judgement in evidence, but the grounds of his objection, if any, do not appear from the report of the case. The objection was overruled and there was a judgment against him, this judgment was affirmed by the Supreme Court of the state and a Federal question—the validity of the original judgment against Sayward for want of due process of law—seems to have been certified to this court, but this court held, among other things, that it nowhere *affirmatively* appeared in the record that the right to have the judgment excluded because process in that cause was not served on Sayward was set up *at the time the court ruled upon the question.* It will be noted that this right had been expressly set up by a plea but it did not affirmatively appear, unless in the certificate of the state court, to have thereafter been affirmatively insisted upon, while in the case at bar the question was not set up by replications or otherwise, and no reference can be found in the record, other than in the certificate of the Supreme Court of Florida, to the question now sought to be raised.

II.

IF IT WERE CONCEDED THAT THE QUESTION NOW RAISED INVOLVES A FEDERAL QUESTION, AND THAT IT WAS PRESENTED TO THE STATE COURTS AT THE PROPER TIME AND IN A PROPER MANNER STILL THIS COURT WOULD HAVE NO JURISDICTION TO REVIEW THE CASE.

Where the Supreme Court of the state bases its decision upon two grounds either of which are conclusive of

the case, this court will not review the decision, though one of the grounds of the decision involves a Federal question.

Eustis v. *Bowles*, 150 U. S., 362.

The first ground of objection made by the defendant to the introduction of the alleged grant in evidence was that "the grant, so far as it relates to the *locus in quo*, "was a mere license to Pintado to use the property in "a particular way, and vested in him no sufficient title "upon which to recover in ejectment" (Pr. Rec., 6). The Circuit Court sustained the objection without specifying upon what particular ground it acted, but the Supreme Court of Florida discussed the questions involved in this particular ground of objection and held that the grant created a franchise merely and vested no title. This alone was conclusive of the case, as ejectment cannot be sustained without either title or prior possession, and the decision of a Federal question, in addition to this, would not authorize this court to review the case.

III.

DOES THE PROPOSITION NOW RELIED UPON BY PLAINTIFF IN ERROR INVOLVE A FEDERAL QUESTION THAT WOULD HAVE GIVEN THIS COURT JURISDICTION TO REVIEW THE THE CASE HAD IT BEEN PROPERLY PRESENTED TO THE STATE COURT AND THE SOLE QUESTION DETERMINED BY IT?

The only reference in the record to the question now relied upon is in the certificate of the state court, and is as follows, viz:

"That the plaintiff in error herein claimed that the

"grant of land and water relied upon by him, as shown "by the record, was included in the grants which re- "mained confirmed under the terms of the treaty between "the United States and Spain, dated February 22, 1819, "and that an inquiry by this court into the authority of "the officer making such grant, he having general au- "thority to make grants, was prevented by the operation "of said treaty." (Pr. Rec., 30.)

The treaty of 1819 created no new property rights whatever; it merely recognized rights that already existed, and stipulated that all Spanish grants made prior to January 24, 1818, should remain ratified and confirmed to the same extent that they would have been valid had the property granted remained under the dominion of Spain. In this respect the treaty only stipulated what would have resulted independent of the treaty under the general doctrines of international law.

United States v. *Perchman*, 7 Peters, 86.

The mere fact that the plaintiff in error claims a right under a treaty is not sufficient to create a Federal question; if that were sufficient, a Federal question could be introduced into every record at the will of either party. The right itself must be one in fact, arising under, or protected by, a treaty, and this is determined as a matter of law by the court, and is not concluded by the mere claim or contention of the plaintiff in error. In the case of the *City of New Orleans* v. *Amas*, 9 Peters, 224, the controversy as in this case, was as to the title to land under grants of governments formerly owning the territory (Spanish and French). Amas claimed under an incomplete Spanish grant, confirmed by an act of Congress,

after the territory was ceded to the United States, while the City of New Orleans claimed that the property was part of the quay of the city as originally platted; that Spain had no right to grant the property to Amas, and that its title was confirmed and protected by the treaty; and that Amas' grant was therefore void. The decisions of the state courts were in favor of Amas, and the cause was brought to this court; it was held that no Federal question was involved, and the cause was dismissed for want of jurisdiction.

In the case of *Cheutoau* v. *Eckhart*, 2 Howard, 354, each party claimed under an act of Congress, confirming incomplete Spanish titles; it was held that a Federal question was involved, because the claim of each party was under an act of Congress confirming their respective titles, but that had the claims been based upon complete Spanish grants there would have been no Federal question involved. This distinction, as to the difference in effect between a complete and an incomplete grant, upon the jurisdiction of this court is strongly marked by the more recent case of the *California Powder Company* v. *Davis*, 151 U. S., 359. Davis filed a bill in chancery in the State Court to establish and quiet his title to a tract of land, and to cancel and annul the title of the California Powder Company as a cloud upon his title. Davis claimed title under a complete Mexican grant made in 1846 and confirmed by the United States in 1854, while the California Powder Company likewise claimed title under a completely Spanish grant which purported to have been made in 1832, and which was confirmed by the United States in 1835. Under the doctrine of the *United States* v. *Perchman*, 7 Peters, 86 (*supra*), the confirmatory acts of Congress only released the rights of the United

States to the grantees, but did not, as between the claimants, affect the titles claimed under the respective Spanish grants. As between the parties, their titles rested solely upon these grants protected by the treaty between the United States and Spain. Davis claimed that the grant under which the California Powder Company derived title was fraudulent and void, and the State court so held. The case was carried to this court, and it held that the controversy was as to the validity of the grant to the California Powder Company, and did not involve any Federal question.

In *Kennedy* v. *Hunt*, 7 Howard, 586, the controversy was over a water front. Prior to 1800, Forbes & Co., under whom Hunt claimed title, obtained a Spanish grant of a tract of land that did not extend to the water front; in 1807, the Spanish Intendent General made a grant to Forbes & Co. of another tract, adjoining the former grant, and extending to the water front. Price, under whom Kennedy claimed title, had prior to 1800, obtained an incomplete Spanish grant of a tract that conflicted with the last grant to Forbes & Co., and this grant was confirmed by the United States in 1829. The treaty between Spain and the United States, by which the territory in controversy was ceded, provided that all grants made by Spain subsequent to 1800, should be void, except in certain cases where the grantee had been in possession prior to that time. Kennedy claimed that the Forbes grant was void, under the treaty, because made subsequent to 1800, but State Court held the title valid, and Kennedy carried the case to this court where it was held that no Federal question was presented, and that it could not consider the question of the validity or invalidity of the Forbes grant.

In the case at bar the plaintiff in error claims title under an alleged complete Spanish grant, while defendants in error claim that the alleged grant is void, and the state court has so held; so that the controversy between the parties is as to the validity of an alleged complete Spanish grant and is exactly the same question that was held in the three cases last cited to involve no Federal question which could confer jurisdiction upon this court to review the case; there is, however, at least one more decision of this court, to the same effect, in which the fact of the case to which the doctrine is applied illustrates most aptly and clearly the application of the principal to the case at bar, in that both in the case at bar and in the case referred to, the Spanish title was attacked and held by the state court to be void for want of authority in the officers from whose acts the alleged titles were supposed to have been derived.

Phillip v. *Mound City Land and Water Company*, 124 U. S. 605.

In this case a controversy arose over certain Mexican grants. The Mexican government made a grant to Palomares and Vigar of a tract known as the Rancho San Jose'; they afterwards formed a partnership with one Arenas, who obtained a third interest in the grant; an additional grant was then made to the firm, and subsequently a partition of the property was had before a Mexican tribunal, and one Dalton succeeded to the interest of Arenas. The territory was afterwards ceded to the United States, and Palomares presented to the commissioners, appointed by the United States to adjust Mexican grants, his claim to an undivided interest in the property, while Dalton and Vigar each presented a claim to the portions of the property allotted to them in the partition proceedings. The commissioners recommended the claims

for confirmation in severalty according to the petitions of Vigar and Dalton; an appeal was taken to the District Court and the grant was confirmed, as made, without reference to the partition proceedings. Subsequently Phillips, having succeeded to one of these interests, filed proceedings in the state court for a partition of the property, assuming that the Mexican tribunal had no authority to make the partition, and that the partition was, therefore, void and the property still held in common; the state court sustained this contention, and partitioned the property, and its decision was affirmed by the highest court of the state. The Mound City Land and Water Company, having succeeded to an interest in the property and being a party to the cause, carried it to this court, claiming that at the time the territory was ceded to the United States the parties held in severalty under the partition proceedings had before the Mexican tribunal, and that such title was, therefore, protected by the treaty between the United States and Mexico; it claimed right and title to part of the property in severalty under this treaty, and therefore contended that a Federal question was involved in the decision of the state court, and had been adjudicated adversely to a right claimed under the treaty. The direct question, whether a decision by a state court, made after the treaty had been executed, holding a title, alleged to have existed under a Mexican, judgment, void for want of authority in the Mexican tribunal involved a Federal question, was presented to this court for adjudication, and it held that: "Article VIII of the treaty protected "all existing property rights within the limits of the "ceded territory, but it neither created the rights nor "defined them. Their existence was not made to depend "upon the constitution, laws or treaties of the United

"States. There was nothing done but to provide that if "they did in fact exist under Mexican law or by reason of "the action of Mexican authorities they should be pro- "tected. Neither was any provision made as to the way "of determining their existence. All that was left by im- "plication to the ordinary judicial tribunals. Any court, "whether state or national, having jurisdiction of the "parties and of the subject-matter of the action was free "to act in the premises. * * * A valid partition would "have created rignts which the United States would have "been bound to respect. That is not denied. * * * "The only question is whether such a partition was made, "and upon that the decision of the state court is final and "not subject to review."

This language is equally applicable to the case at bar. It was not disputed that a Mexican tribunal had made a partition, but it had been held by the state court that the tribunal had no authority to do so, and hence, that the partition was void. In the case at bar it is not denied that Ramerez made the grant under which the plaintiff in error claims, but it has been held by the state court that he had no authoriity to make it as to the *locus in quo*, and that the grant is, therefore, to that extent void. In each case the title, if it existed, was protected by a treaty, but the question was as to the existence, or rather the validity of the title, and this court holds this to be a question for the decision of the state court, and not subject to review.

So that case is absolutely conclusive against the jurisdiction of this court to review the case at bar.

Gregory L. Smith

Of counsel for appellee, the Louisville and Nashville Railroad Company.

No. 251.

Brief of Blount for P.

Filed Dec. 11, 1897.

DEC
JAMES H.

In the Supreme Court of the United States.

OCTOBER TERM, A. D. 1897.

No. 251.

WILLIAM RICHARDSON, TRUSTEE,
PLAINTIFF IN ERROR,

vs.

LOUISVILLE & NASHVILLE R. R. CO., ET. AL., DEFENDANTS IN ERROR.

On motion to dismiss the writ of error for want of jurisdiction.

Brief for Plaintiff in Error.

W. A. BLOUNT, Attorney for Plaintiff in Error.

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Brief for Plaintiff in Error.

We answer the contention of the defendants in error in the order in which their counsel discusses them:

I.

THAT THE FEDERAL QUESTION IS NOT SHOWN TO HAVE BEEN PROPERLY PRESENTED, IF AT ALL, TO THE STATE COURT.

The presentation sufficiently appears if by necessary intendment it is shown that the State court decided the question:

Sayward vs Denny, 158 U. S., 180.

Or if the necessary effect of the decision was to determine adversely to the plaintiff in error the federal question, even though it does not appear that the State *nisi prius* or Supreme Courts formally passed on the question:

Roby vs. Coleheur, 146 U. S., 153.

And the certificate of the State Supreme Court that the question was presented and passed upon is sufficient in connection with the fact that the decision of such a question was necessarily precedent to the determination of the questions appearing to have been formally decided.

The decision of the State Supreme Court in the instant case makes the former decision in the same case (33 Fla., 1-162) a part of itself by reference, and both must be referred to to determine what was decided by the court.

In that case an objection to the grant to V. S. Pintado: "7th. That it was not one which was validated or recognized by the treaty between the United States and Spain," was made before the lower court (33 Fla. p. 19). The court overruled the objection.

The Supreme Court of Florida (33 Fla., p 94) mentions the objection, but postpones consideration of it. It discusses the construction of the grant as to the character of the property conveyed, and then its validity, as depending upon the power of Ramirez, the intendant, to make it. It touches upon the treaty historically (p. 119), and finally announces (p. 161) that "it is unnecessary to review specially the rulings of the Circuit Judge as to the effect or validity of this grant, or to pass upon any question not already disposed of. These rulings are irreconcilable to the conclusions we have reached, and the judgment must be reversed," etc.

The Circuit Judge having held that the treaty validated and recognized the grant, the Supreme Court, having in mind this ruling, declared it irreconcilable with its own rulings and reversed the case.

It follows necessarily that the Court passed against the claim founded upon the treaty. If in this state of the record there be any doubt, the certificate of the State Court disperses it.

II.

THAT THE DECISION WAS BASED UPON TWO GROUNDS, ONE OF WHICH DID NOT INVOLVE A FEDERAL QUESTION.

To prevent the acquisition of jurisdiction by this Court, the non-federal question must have been so decided as to suffice by itself to sustain the decision:

Dibble vs. Billingham, etc., 163 U. S., 63.

It is not sufficient that an opinion shall have been given upon a question not federal, but the decision must rest upon that as an independent ground:

Cal. Powder Co. vs. Davis, 151 U. S., 393.

Here, while the State Supreme Court decided that the grant did not convey a fee simple title, yet it did not rest its reversal of the cause upon that ground. Upon the contrary, this decision was but one step in its arriving at the authority of the intendant to make the grant.

It did not decide that if the intendant had had authority to make the grant, the plaintiff could not have recovered in ejectment. Such decision would have been *obiter dictum*, because, since the intendant was held not to have had power, it would have been idle to discuss what the plaintiff could have done if the decision upon that question had been otherwise.

Nor did the State Supreme Court decide, either, that it was only a franchise. Indeed, it said that the grantee had "a property in the described land and water to the extent necessary to the full exercise of the stated rights," * * * that is, of erecting wharves and bath houses.

It cannot be affirmed that the necessary effect of this holding is to prevent a recovery in ejectment, for one who has a property in land for the purpose of occupying it to the exclusion of all others may surely maintain an ejectment against another ousting him from such occupation.

III.

THAT THE QUESTION PRESENTED BY THE RECORD AND CLAIMED TO BE A FEDERAL QUESTION IS NOT A FEDERAL QUESTION.

The authorities cited by the defendants in error upon this ground of the motion to dismiss are authoritative, and, if applicable, determine the question. The plaintiff in error, however, insists that they are not applicable, because the treaties under which they were decided were not like in terms to that which is here involved, and because the question here raised was not presented in them.

The eighth article of the treaty between the United States and Spain, dated February 22nd, 1819, the protection of which is invoked by the plaintiff in error, reads as follows:

"All the grants of land made before the 24th of January, 1818, by his Catholic Majesty, or by his lawful authorities, in said territorries ceded by his Majesty to the United States, shall remain ratified and confirmed to the persons in possession of the grants to the same extent that the same grants would be valid if the territories had remained under the dominion of his Catholic Majesty."

This not only protects all the grants of land made by the king, but those made by his lawful authorities, and provides that they all be protected to the "same extent as if the territories had remained under the dominion of his Catholic Majesty."

If the State Court has declared the grant invalid upon a ground which could not or would not have prevailed if the lands had remained subject to the dominion of Spain, then that court has violated the treaty, because it has not permitted it to afford the protection contemplated by it.

If the Spanish rule had remained, no inquiry would have been permitted into the authority of Ramirez to make the grant, or if permitted, could have been made only by the king. It is this exemption from inquiry which the treaty protected, and it was this right which was claimed in the court below, and of which the plaintiff in error was deprived by its decision.

Ramirez had authority to make grants:

U. S. vs. Arredondo, 6 Pet., 691-734 and 746.
U. S. vs. Clarke, 8 Pet., 451.
2 Cal. L. L., 185, 186-245-478.
White's Spanish Law, 157.

And being so authorized, his authority to make a particular grant cannot be questioned:

U. S. vs. Arredondo, 6 Pet., 723.
U. S. vs. Clarke, 8 Pet., 451.
U. S. vs. Percheman, 7 Pet., 95.
Strother vs. Lucas, 12 Pet., 409.

Or, if it can be questioned, the want of power must be clearly shown in that particular instance:

Mobile vs. Eslava, 9 Porter, 577, and authorities just cited.

Not by showing a general lack of power in the particular class of cases, for if inconsistent with his general powers, it will be presumed to be in accord with specific instructions from the king which are unknown to us:

U. S. vs. Clarke, 8 Pet., 447, 451, 454.

U. S. vs. Percheman, 7 Pet., 95.

But by proof that the king not only had the power to disavow, but actually disavowed the grant:

U. S. vs. Clarke, 8 Pet., 451.

U. S. vs. Arredondo, 6 Pet., 728.

and this presumption will be made and this proof required, even though the grant purport to be made under a power which did not authorize it:

U. S. vs. Percheman, 7 Pet., 95.

for no instance has ever been found in which the king repudiated grants made by his governors or intendants:

U. S. vs. Sibbald, 10 Pet., 322.

U. S. vs. Clarke, 8 Pet., 458.

The treaties involved in the decisions in the cases cited by the defendants in error contained no such protecting provisions as contained in the treaty under consideration, and do not rule this.

W. A. BLOUNT,

Attorney for Plaintiff in Error.

RICHARDSON *v.* LOUISVILLE AND NASHVILLE RAILROAD COMPANY.

ERROR TO THE SUPREME COURT OF THE STATE OF FLORIDA.

No. 251. Submitted December 13, 1897. — Decided January 17, 1898.

On a motion to dismiss for want of jurisdiction, this court being of opinion that the ruling of the state court on the points upon which the case turned there was obviously correct, does not feel constrained to retain the case for further argument, and accordingly affirms the judgment.

Opinion of the Court.

THIS was an action of ejectment brought in a state court of Florida, to recover tracts of land at and near Pensacola, alleged to have been granted to the person from whom the plaintiff deraigned title, by the Spanish superintendent general before the acquisition of Florida by the United States. Judgment was entered for the defendants by the trial court, which judgment was sustained by the Supreme Court of the State. The grounds upon which each of these judgments was founded are briefly stated in the opinion of the court, below. The defendant in error moved to dismiss the case for want of jurisdiction. His motion was as follows:

"Comes the appellee, the Louisville and Nashville Railroad Company, by its counsel of record, Gregory L. Smith, and moves the court to dismiss the above entitled cause for want of jurisdiction in the Supreme Court of the United States to review the same, in that:

"It does not appear from the record that the questions relied upon by the plaintiff in error, to give jurisdiction to this court, were presented to the state courts for consideration at the proper time and in the proper manner.

"The Supreme Court of Florida based its decision upon two sufficient grounds, at least one of which does not involve, and is not claimed to involve, a Federal question.

"No Federal question sufficient to give jurisdiction to this court to review the decision of the state court is involved in the cause or was decided by the Supreme Court of Florida."

Mr. Gregory L. Smith for the motion.

Mr. W. A. Blount opposing.

MR. CHIEF JUSTICE FULLER delivered the opinion of the court.

This was an action of ejectment brought by plaintiff in error in the Circuit Court of Escambia County, Florida.

On the trial plaintiff offered in evidence an alleged Spanish grant of several tracts from Don Alexander Ramirez, intendant of the army and superintendent general of Cuba and the two Floridas, to Don Vicente Sebastian Pintado with proof of

execution; and also deraignment of paper title from Pintado's heirs to himself. No evidence was offered of actual prior occupation. The property sued for was included in one of the tracts, described as follows:

"The lands designated by the letter C are an extension or tract of the bay of Pensacola, whose superficies of water is equal to an area of 718½ arpents, superficial, occupying between the eastern point of the mouth of the creek of Casa Blanca, commonly called Bayou Chico, and the western point of the mouth of the rivulet or creek of Texar, commonly called Bayou Texar, and a line drawn in the direction of southeast of the needle, ninety-five perches of Paris, within the sea, from the aforesaid first point, and the other line of 100 of said perches in length, counted from the second point mentioned within the sea, also from the same point of southeast of the needle, which embraces the whole of the front from the one to the other mouth of the creeks of Casa Blanca and Texar, between which is the town of Pensacola, the whole conforming and according to the plan annexed, made for the greater clearness and understanding in which is represented the figure which the said land forms in the water and the limits within the bay of Pensacola, being that part of the land and beach which is found between the said two points of the mouths of the mentioned creeks, the curve which the shore of the water of the sea at the highest tide in calm weather makes, and with the depth from the surface of the water as far as ten feet English below the actual bottom, or towards the centre of the earth, in the whole, the space which the figure represented in the said plan C embraces, considering it as a solid, since it has these three dimensions of longitude, latitude and depth. . . . The whole in full property and for the purpose of constructing wharves and houses for bathing, reserving and saving not only the right of his majesty, but also that of the public, at all times whenever it becomes convenient, and it be designed to construct wharves with whatsoever funds, municipal or common, intending the exclusion only with respect to particular individuals."

Opinion of the Court.

Defendants objected to the introduction of the grant upon the following grounds, viz.:

"The grant so far as it relates to the *locus in quo* was a mere license to Pintado to use the property in a particular way and vested in him no sufficient title upon which to recover in ejectment.

"Because said grant, so far as it relates to the *locus in quo*, was not an exclusive grant of the property occupied by the defendants.

"Because said grant, so far as it relates to the *locus in quo*, was not within the delegated authority of the officer who attempted to grant the same.

"Because said grant, so far as it relates to the *locus in quo*, is not one which was validated or recognized by the treaty between the United States and Spain.

"Because it is not shown that Alexander Ramirez had the power or authority to make said grant, so far as it related to the *locus in quo*."

The trial court sustained defendants' objections and excluded the grant, and plaintiff excepted.

Thereupon a verdict was returned for defendants and judgment entered thereon, from which an appeal was taken to the Supreme Court of the State. In that court the plaintiff in error assigned but one error, to wit, "The refusal of the court to admit in evidence the grant from Alexander Ramirez to Vicente S. Pintado."

The Supreme Court of Florida affirmed the judgment, and held that the purpose of the grant "as to the water front therein described was not to grant the land and water as such within the described limits, but the right to use the same, within such limits and to the depth stated below the surface of the soil, for the purpose of constructing wharves and houses for bathing, such right of use being to the exclusion of any similar right of use in any other individuals, and subordinate to the right of the King and the public to construct wharves with municipal or common funds within such limits; also, that while the King of Spain could have made such a grant to Pintado, it would have been contrary to his laws then in

force in West Florida and a case of special exception from their effect, and that Ramirez had no authority to make the grant, and it was void and vested no title in the grantee." *Richardson* v. *Sullivan's Executors*, 20 Sou. Rep. 815. And see *Sullivan* v. *Richardson*, 33 Florida, 1, where the case is fully considered on a prior appeal.

On affirming the judgment the Supreme Court entered an order to the effect that, in holding the grant void, a claim by plaintiff of a right, title or privilege under the treaty between the United States and Spain of February 22, 1819, had been disposed of adversely to him; and a writ of error from this court was allowed.

As before stated, defendants objected to the admission of the grant in evidence on the grounds that, so far as it related to the *locus in quo*, it "was a mere license to Pintado to use the property in a particular way and vested in him no sufficient title on which to recover in ejectment;" and also that the grant "was not within the delegated authority of the officer who attempted to grant the same." Thus the construction of the grant and its validity were presented for consideration as distinct inquiries, and while the trial court assigned no reasons for its action, the Supreme Court passed on both questions, and in its first opinion elaborately discussed them.

But in sustaining the ruling of the trial court in excluding the alleged grant, the Supreme Court rested its decision on the want of authority to make such a grant as it held this to be. Therefore, the contention on behalf of plaintiff in error is that this court necessarily has jurisdiction. As, however, we entirely concur with the state court in the view that the grant was not a grant of title, but of a mere license, easement or right of use, and no evidence of prior possession was offered, we need not consider whether the grant as thus correctly construed was valid or not, for, even if valid, the ruling on this record could not have been other than it was. That ruling was so obviously correct that we do not feel constrained to retain the case for further argument. *Chanute City* v. *Trader*, 132 U. S. 210.

Judgment affirmed.